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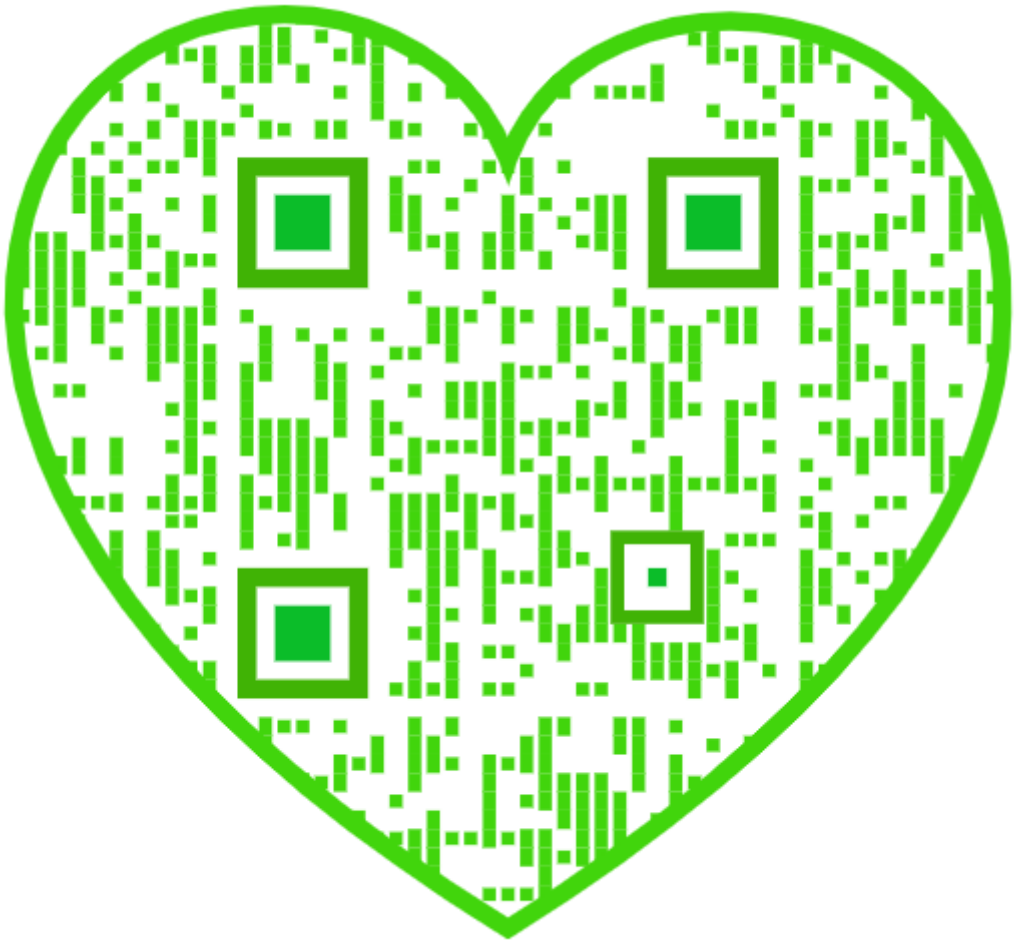

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# FISHING.

A

TRANSLATION

FROM

*THE LATIN OF VANIER.*

BOOK XV. UPON FISH.

*By the late Rev. JOHN DUNCOMBE,*

OF C. C. COLL. CAMB.

WITH

A BRIEF INTRODUCTION;

AND

PASSAGES FROM ENGLISH WRITERS,

SELECTED AS NOTES.

LONDON:

PRINTED FOR R. TRIPHOOK, 37, ST. JAMES'S STREET.

1809.

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*THE following pages form an article in the* CENSURA LITERARIA, *but a few additional copies have been printed for general distribution.*

J. H.

T. Bensley, Printer,
Bolt Court, Fleet Street, London.

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# FISHING.

FISHING may probably claim origin with the expiration of the poet's golden age. When the vitiated palate of man first imbibed the savoury gratification of animal food, the weak and the indolent, alike too supine to share in the fatigues of the chase, contrived the obtainment of a viscous substance by a less laborious but more cunning depredation upon the tenants of the deep. As mankind increased in number, and nations were formed, the art became general; nor was the simple character of the fisherman finally unimportant. Upon the foundation of the mild doctrines of the Christian religion an "astonishing and rapid propagation of it [took place] by a few illiterate tent-makers and fishermen through almost every part of the world." * From that period, in the earliest history of every country, it may be gleaned, that fishing

* Lecture I. upon the Gospel of St. Matthew, by the present Bishop of London.



072

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supplied a large portion of nutritive sustenance to the various inhabitants, and, in some places, has progressively risen from a domestic trade to a material branch of the public revenue by exportation. As a practical art it has experienced little if any alteration for centuries. Instances may be found of the untutored savage exercising his adroitness by diving, while the invention of more polished regions is exhibited in the varying mesh and subtle deception of a baited hook. Painters and poets of all periods describe similar modes of destruction. Of our domestic records, upon the research of a late antiquarian, into the sports and pastimes of the people, not any particulars were met with "sufficiently deviating from the present method of taking fish to claim a place in his work." * The following extract is curious, and is one of the earliest notices upon the subject, which combines the statute and common law of the realm at that period. "If any man fysshe in the lordes pooles or meyres, the lorde maye haue his accyon vpon the statute of Westmynster prim^r. [3 Ed. I. C 20—1275.] And yf he fysshe in the rynning and seuerall waters, the lorde may haue his actyon at the com^men lawe, & in lykewyse the lordes tenaunt, if any man fysshe in his ferme holde, be it standynge waters and rynninge waters: and where he saythe de omnibus of commen fysshynges, that is lytell profyte to y^e. lorde but to his tenau^tes, except he dwell nighe the sea, and wyll cause his seruant to fysshe there for hym, for y^t. is the best com^men water y^t. any man can fisshe in. And some rynning waters be com^men, as lytell

* Strutt's Sports and Pastimes, p. 7.

brokes,

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brokes, and sytches, and in some rinnyng waters the lordes tenaũtes haue lybertie by custoe to fysshe with shouenettes, trodenettes, small pytches, and suche other."* To recapitulate the various English writers upon fishing, according to the science of angling, would prove too voluminous for a brief essay. Such an attempt must commence with the "treatyse of fyshynge wyth an angle," of 1496, by Juliana Berners, and after enumerating near two hundred various publications connected with the subject, conclude with the late edition of Walton's Complete Angler, as re-edited by, and with the subsequent additions of Sir John Hawkins.† Several inquiries have been made respecting

* Boke of surveyeng and improumẽtes, 1523.

† "Although this work [the Complete Angler] seems to be little more than a treatise on fish and fishing, the reader, whether he is a proficient in angling or not, will find abundant entertainment in it.—It is written in dialogue, and is interspersed with several pieces of excellent old English poetry, and discovers such a vein of natural humour, and harmless pleasantry, as has rendered it the delight of the most ingenious for more than a century. The author, Mr. Walton, was intimate with the wits of King James the First's time; of whom, and of many other remarkable persons, there are, in this edition, many curious anecdotes. Cuts are now added of the principal scenes, designed by Mr. Wale, and engraved by Mr. Ryland, in which the characters are dressed in the habits of the times: which cuts, the reader may be assured, cost, in designing and engraving upwards of one hundred pounds." *Bookseller's advertisement of first edition by Hawkins, from Newspaper July*, 1760. The late edition of this work forms a handsome volume in quarto, and in two different sizes octavo. The embellishments are by Mr. Philip Audinet, who has again copied from the original designs of Wale: to these are added some portraits, and the fish are engraved from a set of new designs, made for the purpose.

The following extract from the preface to the experienced Angler (another old and valuable publication) by Col. Venables, claiming the superiority of this

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specting the following poem, and there is reason to conclude it is now first printed. The date of the manuscript

this pursuit over other more expensive diversions is too connected with the present article to be omitted.

"Hawking and hunting have had their excellencies celebrated with large encomiums by divers pens; and although I intend not any undervaluing to those noble recreations, so much famed in all ages and by all degrees, yet I must needs affirm, that they fall not within the compass of every one's ability to pursue, being, as it were, only entailed on great persons and vast estates; for if meaner fortunes seek to enjoy them, Actæon's fable often proves a true story, and those birds of prey not seldom quarry upon their masters: besides, those recreations are more subject to choler and passion, by how much those creatures exceed a hook or line in worth; and indeed in those exercises our pleasure depends much upon the will and humor of a sullen cur, or kite (as I have heard their own passions phrase them) which also require much attendance, care, and skill, to keep her serviceable to our ends. Further, these delights are often prejudicial to the husbandman in his corn, grass, and fences; but in this pleasant and harmless Art of Angling, a man hath none to quarrel with but himself, and we are usually so entirely our own friends as not to retain an irreconcileable hatred against ourselves, but can in short time easily compose the enmity; and besides ourselves none are offended, none endamaged; and this recreation falleth within the capacity of the lowest fortune to compass, affording also profit as well as pleasure; in following of which exercise a man may employ his thoughts in the noblest studies, almost as freely as in his closet; the minds of anglers being usually more calm and composed than many others, especially hunters and falkoners, who too frequently lose their delight in their passion, and too often bring home more of melancholy and discontent than satisfaction in their thoughts; but the angler, when he hath the worst success, looseth but a hook or line, or perhaps (what he never possessed) a fish, and suppose he take nothing, yet he enjoyeth a delightfull walk by pleasant rivers, in sweet pastures, amongst odoriferous flowers, which gratifie his senses and delight his mind; which contentments induce many (who affect not angling) to choose those places of pleasure for their summer's recreation and health. But peradventure some may alledge that this art is mean, melancholy and insipid: I suppose the old answer, *de gustibus non est disputandum*, will hold as firmly in recreations as palats; many have supposed angling void of delight, having never tried it, yet have afterwards experimented it so full of content,

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script is uncertain, probably about 1750, and from several corrections in the original must have been the translator's copy. Extracts from other works are given as notes, but discussions upon manufacturing flies, or the ingenious torment of threading a live bait, are purposely omitted; yet it is hoped amusement and information will prove sufficiently blended for those notes to be considered rather above the character of "a string of whiting's eyes."

*Vaniere. Book XV. Of Fish. Translated from the Latin. By I. D.* of C. C. Coll. Camb.*

Of Fish I sing, and to the rural cares
Now add the labours of my younger years.
These lays, Lemoignon, your protection claim,
Now more improv'd since first they gave me fame;
From hence to tend the doves and vines I taught,
And whate'er else my riper years have wrought.
Here, where in pleasing fables I relate,
How various bodies were transform'd by fate,

content, that they have quitted all other recreation (at least in its season) to pursue it..... The cheapness of the recreation abates not its pleasure, but with rational persons heightens it; and if it be delightful the charge of melancholy falls upon that score, and if example (which is the best proof) may sway any thing, I know no sort of men less subject to melancholy than anglers; many have cast off other recreations and embraced it, but I never knew any angler wholly cast off (though occasions might interrupt) their affections to their beloved recreation; and if this art may prove a noble brave rest to my mind, 'tis all the satisfaction I covet."

* Rev. John Duncombe, of Corpus Christi College, Oxford, Rector of Hearne, Kent, and St. Andrew, with St. Mary Bredman, Canterbury. Ob. Jan. 19, 1786, æt. 56. See Gent. Mag. Vol. LVI. pp. 187-451, where this translation is mentioned. It is now printed from the copy referred to as in the possession of the late Mr. Reed. See his Translation of Vaniere's fifth book in George Jeffreys's Miscellanies, 1754, 4to.

Your

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Your youthful grandsons may amusement find,
Who, Virtue's seeds now rip'ning in their mind,
Nor yet in Greek or Roman writers read,
But by your life and sage instructions bred,
May nourish in their minds the sweet essays
Of virtue rising to their grandsire's praise.
Curson by you was taught to guide the helm,
And that, when dead, you may protect the realm,
You fashion in their turn his blooming heirs,
That, while great Lewis for the world prepares,
A line of future monarchs he may view,
A line of ministers, prepar'd by you;
Whose names and deeds our annals may adorn
In future times and ages yet unborn.
Whether the place you for your fish provide,
High hills with springs surround on ev'ry side,
(The work of nature this, and not of art,)
Or, lying in a valley, ev'ry part
By banks with ease may be sustain'd, in all;
Improve the land that to your lot may fall.
Who dwells on level ground, tho' rais'd with pain,
His banks the waters weight can scarce contain.
Yet let him not despair; for wealth and toil
Will model to his mind the stubborn soil.
Where like a channel you behold a field,
Which, tho' it would increase of harvests yield,
Will yet, if flooded, still more fruitful grow,
Pour in the tide, and let it overflow:
Then fish may nibble grass, beneath the flood,
Where goats were wont to crop their flow'ry food.
When now for sixty months the scaly breed
Has kept possession of the watry mead;
Drain'd in its turn it will reward the swain
For sixty months with more than promis'd gain;
Thus may a valley fish and harvests yield,
And now appear a lake, and now a field;

Water

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Water and corn by turns possess the plain,
And Ceres now, and now the Naiads reign.
Lakes for their fishes some on hills prepare,
From whence the water with a friendly care
Supplies their gardens with refreshing tides;
Or, under ground, thro' wooden pipes it glides,
Till, with a sudden noise it mounts again,
And sportful falls in sheets of copious rain.
Oft will the streams, o'erflowing, fill the mead
With wond'ring nations of the scaly breed;
The fish exulting wanders o'er the plain,
And now admires the grass and now the grain;
Deep in the spacious furrows lies conceal'd,
Or crops the floating herbage of the field;
Till, left to perish in the mud, too late
He sees his error, and bewails his fate.
By Vice's stream a youth, thus hurry'd o'er
Fair Virtue's bounds to paths unknown before,
With transport follows where soft pleasure leads,
And roves thro' flow'ry but forbidden meads:
But, when his joys are like a torrent fled,
Sad he reviews the life that once he led;
Now, tho' too late, he struggles to retire,
But still remains and flounders in the mire;
Till, by experience vainly render'd wise,
He sees his folly and repenting dies.
In hollow depths of rocks the fish delight,
The cooling shade t' enjoy and shun the sight;
Be thou indulgent to the finny race
And after nature's model, form the place;
But since the stream, unable here to flow,
Will often stagnate and corrupted grow;
Rather let shelt'ring trees o'ershade the flood;
But then the leaves, when shaken from the wood,
Should with the current down the river swim,
Lest by corrupting they defile the stream.

Let

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Let rivers therefore from the mountains flow,
To change the water of your lakes below.
Fish, by the river brought, your ponds receive,
Which with the stream, when they attempt to leave,
To bar their flight a fence of hurdles place,
Thro' which the stream may flow; the finny race,
Struggling in vain, becomes an easy prize,
And still pursues the stream with eager eyes.
No place for fish is more convenient found,
Than moats which do your house's walls surround;
For here the mazes of the stream they trace,
And chuse in Winter's cold, a sunny place,
Or to the house's friendly shade repair
As oft as summer suns inflame the air:
Be mindful thou the hungry race to feed,
The fish themselves in their own cause will plead;
And, rising to the surface of the flood,
With hungry gaping jaws demand their food.
Let then your children crums of bread bestow,
Or bits of biscuit from their windows throw,
From whence they may behold their sportive play,
And see how greedily they snatch the prey. *

Sometimes

* " One, like a pirat, only liues of prizes,
That in the deep he desperatly surprises:
Another haunts the shoar, to feed on foam;
Another round about the rocks doth roam,
Nibbling on weeds; another, hating thieuing,
Eats nought at all, of liquor only liuing;
For the salt humor of his element
Serues him, alone, for perfect nourishment.
Som loue the clear streams of swift tumbling torrents,
Which, through the rocks straining their struggling currents,
Break banks and bridges, and doo neuer stop,
Till thirsty sommer come to drink them vp;
Some almost alwayes pudder in the mud
Of sleepy pools, and neuer brook the flood

Of

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Sometimes your servant scraps from table brings,
Or meat your cook into the water flings:
Fish sometimes yield to fish a rich repaste,
And sons insatiate on their fathers feast.
You grains of corn may scatter, and survey
Your fish engag'd in battle or in play;
Or, if in sport and shooting you delight,
With pleasure here at home, conceal'd from sight,
May use by turns your arrows and your gun,
Safe from the show'rs and from the scorching sun;
Whether they sportive leap into the air,
Or to the surface of the stream repair.
Ponds for your fish wherever you provide,
They with fresh store in spring should be supply'd;
In spring the male with love's soft flames inspir'd,
And in defiance of the water fir'd,
Can scarce perceive the change; and, big with young,
A num'rous breed the female bears along!
Now o'er the neighb'ring streams extend your nets,
And throw your lines, well furnish'd with deceits;
Join scarlet colours, which, expos'd to view,
Fish thro' the water greedily pursue;
And as a skilful fowler birds employs,
Which, by their well-known voice and treach'rous noise,
Allure their fellows and invite to share
Their fate, entangled in the viscous snare;
So fish, when taken, other fish allure;
Who, seeing them, grow dauntless and secure: *

But

Of crystall streams, that in continuall motion
Bend t'ward the bosom of their mother Ocean."
Sylvester's Du Bartas, 5th day.

* "Dialogo. xlviii. Of a Fissher and a lytyll Fissh. A fissher as he fisshed he cawght a lytell fissh and whan he wolde haue kylled him he spake and sayde. O gentyll fissher haue mercy vppon me, for yf thou kyl me thou shalt

But not thro' studied malice they betray,
But by our art deceive the finny prey:
This may be pardon'd in a silent race,
Who cannot warn their friends of the deceitful place:
Man only with premeditated mind
Betrays his brethren, and ensnares mankind. *

If

shalt haue but little auauntage of me. But & if thou wilt suffre me to go fre and delyuer me from this daunger & captiuitie, I promise to God and to the, that I shall cawse the to haue greate wynnynge, for I shal retourne vnto the daylye withe greate multitude of fisshes and I shall lede them into thy nettis. To whom the fissher sayd. How shall I mowe knowe the emonge so many fisshes. Then sayd ye. fissh. Cut of a lytell of my tayle that thou mayst know me emong all othir. The fissher gaue credence to his woordis and cut of his tayle and let him go. This lytel fissh was euer vncurteys, for contrary to his promyse he lettyd the fissher as oftyn as he shuld fissh, and withdrewe ye. fisshes from him and sayd. Faders and worshipfull senyours be ye ware of that deceyuar for he deceyuyd me, & cut of my tayle, and so shall he serue you if ye be not ware, and, yf ye beleue not me, beleue his workis that apere vpon me. And thus saynge the fissh shewed them his tayle that was cut. Wherfor the fisshes abhorryd ye. fiyssher and fled from him in al possible haste. The fissher vsid no more fysshinge, wherfore he leuyd in great pouerte. Of fortune it happid so that a long while aftir the fissher cawght agayne the same fissh emong othir; and whan he knew him, he kylled him cruelly and sayde;

He that hath a good turn and is vncurteys agayn,
It is veray rightfull that he be therfore slayne."

*The Dialoges of Creatures Moralysed, applyably and edificatyfly, to euery mery and iocunde mater, of late translated out of Latyn into our Englysshe tonge right profitable to the gouernaunce of man. And they be to sell, vpon Powlys Churche Yarde.* 4to. *n. d.* Has a prologue and table. Interspersed with many wood cuts. Folded in fours, and extends to I. I. iiij. Col. *Thus endith the Dialoges of Creatures moralysed, &c.* ut supra.

* Though this duplicity is nurtured by the factitious wants of a crowded city, it seldom intrudes upon the hovel of industry; yet the pillow of weary labour is not unvisited by the baneful dreams of gold.

"Two ancient fishers in a straw-thatch'd shed,
Leaves were their walls, and sea-weed was their bed,

Reclin'd

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If in the stream a craggy rock there lies,
Thither the finny race for shelter flies:
This from the rising water may be known,
Which breaks in bubbles, by the fishes blown;

Reclin'd their weary limbs: hard by were laid
Baskets, and all their implements of trade,
Rods, hooks, and lines, compos'd of stout horse-hairs,
And nets of various sorts, and various snares,
The seine, the cast-net, and the wicker maze,
To waste the watery tribes a thousand ways:
A crazy boat was drawn upon a plank;
Matts were their pillow, wove of osier dank;
Skins, caps, and rugged coats, a covering made;
This was their wealth, their labour, and their trade,
No pot to boil, no watch dog to defend,
Yet blest they liv'd with penury their friend.——

[The one relates.]

Methought I sat upon a shelfy steep,
And watch'd the fish that gambol'd in the deep;
Suspended by my rod, I gently shook
The bait fallacious, which a huge one took;
(Sleeping, we image what awake we wish;
Dogs dream of bones, and fishermen of fish;)
Bent was my rod, and from his gills the blood
With crimson stream distain'd the silver flood.
I stretch'd my arm out, lest the line should break;
The fish so vigorous, and my hook so weak!
Anxious I gaz'd; he struggled to be gone;
'You're wounded—I'll be with you, friend, anon—'
'Still do you tease me?' for he plagu'd me sore;
At last, quite spent, I drew him safe on shore,
Then grasp'd him with my hand for surer hold,
A noble prize, a fish of solid gold.———
—— Go search the shoals, not sleeping, but awake,
Hunger will soon discover your mistake;
Catch real fish; you need not sure be told
Those fools must starve who only dream of gold."

Fawkes's Theocritus, Idyl. xxi.

If

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If rocks deny, let art retreat bestow,
And leafy branches in the water throw.
Now when the fish, invited by the food,
Frequent the shade, hang nets around the flood,
And drawing down the stream your boughs, convey
Into your flaxen snares the finny prey.
Then leafy boughs and branches place again,
And with fresh arts a fresh supply obtain.
Tubs, which to lakes your captive fishes bear,
Should at the top admit the vital air;
And if a brook or spring is in the way,
With cooling draughts refresh the thirsty prey.
Various of waters, as of soils, the kind;
Some stagnant, others running there you'll find,
The bottom fill'd with oose, and mud, and here
Sand mixt with golden gravel will appear.*

* "The fish of lakes, and motes, and stagnant ponds
(Remote from sea, or where no spring commands,
And intermingling its refreshing waves
Is tench unto the mote, and tenches saves
And keeps them medical) are of all sorts
Lesse innocent, unless some river courts
The sullen nymph, and blending waters, she
Of a foul *Mopsa's* made *Leucothoe.*
Her inmates otherwise, like herself, smell,
Taste of the harbour (that is) scent not well;
Slow to digest: alive, they liv'd to close,
And dead they can't their native dulness lose.
Give me a salmon, who with winged fins
'Gainst tide and stream firks o're the fishing-gins
Of locks and hives, and circling in a gyre
His vaulting corps, he leaps the baffled wyre.
Let fish have room enough and their full play,
No liquor want, not on a Fish-street day."

Edmund Gayton's Art of Longevity, 1659.

In

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In lakes where the dull waters ever sleep,
You perches,* bleaks, and salmon-trout,† may keep,
Who

* "Of the meruayles and wondres of Wales.
Ther ben hylles in snowdonye
That ben wonderly hye;
With heyght as grete awaye,
As a man maye go a daye:
And kete eriri on Walsshe,
Snowy hylles in Englysshe:
In these hylles ther is
Leese inough for all beestes of Walis.
The hylles on coppe beres,
Two grete fysshe weres;
Conteyned in that one ponde,
Meueth with the wynde an Ilonde,
As though it dyde swymme,
And neyheth to the brymme:
So that heerdes haue grete wonder,
And wene yt. the worlde meueth vnder.
In that other is perche and fysshe,
And eueryche one eyed is." Polychronicon.

† Extract from lines on taking a salmon, 1787.
——"O bliss divine!
A salmon flound'ring at my line!
Sullen, at first he sinks to ground,
Or rolls in circles round and round;
Till, more inflamed, he plunging, sweeps,
And from the shallows seeks the deeps;
Then bends the rod, the winch then sings,
As down the stream he headlong springs;
But, turned with fiercer rage, he boils,
And tries indignant all his wiles;
Yet vainly tries, his courage flown,
And all his mighty powers gone,
I wind him up with perfect ease,
Or here, or there, or where I please;
Till quite exhausted now he grows,
And now his silver sides he shews;
Nor one faint effort more he tries,
But near my feet a captive lies;

His

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Who on their backs as many colours show,
As heav'nly Iris on her painted bow.
With these the smelt and smaller turbot place,
And tench, the fav'rites of the vulgar race,
With slipp'ry eels which may be caught with ease
Descending from the rivers to the seas;
For as each year the wand'ring swallow flies
The southern suns and more indulgent skies;
So when rough northern blasts the rivers freeze,
The tender eel, of cold impatient, flees
To the warm sands and caverns of the seas; *
And thence returns in summer as before,
To the cool streams and shelter of the shore.
Chuse then a place to practise your deceit,
Where rocks reduce the river to a strait,
So that the stream may flow, when thus confin'd,
With force to turn a mill and corn to grind:
Then near the flood gates in a narrow space,
Hard of access, with reeds enclose a place;
The bending osiers will with ease allow
The stream retiring thro' the chinks to flow;

His tail I grasp with eager hand,
And swing, with joy, my prize on land."

* The tackle must be adapted to the season, but the angler may remain indifferent as to the wind; "so (as one instructor gravely adds) that he can cast his bait into the river." The planetary influence upon fish is alluded to by Gower, in the Confessione Amantis, 1554.

"Benethe all other stont the moone,
The whiche hath with the sea to doone,
Of floodes highe, and ebbes lowe,
Vpon his chaunge it shall be knowe,
And euery fisshe, whiche hath a shelle,
Mote in his gouernance dwelle,
To wexe and wane in his degree,
As by the moone a man mai see."

But,

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But, in the wicker prison will detain
The slipp'ry eel descending to the main;
By whom a time for flying will be chose,
When now the stream a safe return allows,
And swoln with wintry show'rs o'er all its borders flows.
But, as a leader, who attempts to go
By night in secret, to elude the foe,
Will find the foe prepar'd to stop his flight,
And equally befriended by the night:
So with the fisherman, with timely care
In muddy streams the flying Eel ensnare,
And nets to stop the fugitive prepare.
The Carp, the native of th' Italian Lar, *
And Whiting standing waters will prefer;
And Blease, and Umbles, like an ancient trout,
Tho' weak in fight, yet threatning with their snout;
For tho' sharp teeth in triple ranks are shown,
Whole nations fly before the pike alone;
Fierce to destroy with blood the stream he stains;
For courage, and not strength, the conquest gains. †

The

* Venice is described in Purchas's Pilgrimes, as

——— a riche toun of spicery:
And of alle other marchandise also,
And right well vitelet therto;
And namely of fresche water fische,
Pike, Eile, Tench, Carpe, I wis:

Vol. II. p. 1236, Ed. 1625.

"The Carp is a stately, and very subtle fish, stiled the fresh-water fox, and queen of rivers; he is originally of foreign growth; Mr. Mascall a Sussex gentleman, having the honour of first bringing them hither, about the year 1524, Ann. Reg. 15 Hen. VIII. Dr. Heylin informs us that,

Reformation, turkeys, carps, hops, and beer,
Came all into England in the same year.

And as Sussex had the first, so does it at this time abound with more carps than any other county." *Whole Art of Fishing*, 1714.

† "The pike is the pirate of the lake, that roves and preyes upon the little

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The Carp which in th' Italian seas was bred,
With shining scraps of yellow gold is fed:
Tho' chang'd his form, his avarice remains,
And in his breast the love of lucre reigns.
For Saturn flying from victorious Jove,
Compell'd of old, in banishment to rove
Along th' Italian shore, a vessel found
Beyond the lake of wide Benacus bound;
He, for his passage, at a price agreed,
And with large gifts of gold the master fee'd.
But he the master (Carpus was he nam'd)
With thirst of gain, and love of gold inflam'd;
Prepar'd in chains the passenger to bind,
But to the god his face betray'd his mind,
And from the vessel in revenge he threw
Into the waves the pilot and his crew;

little fishermen of that sea, who is so covetous and cruell, that he gives no quarter to any; when hee takes his prize hee goes not to the shore to make his market, but greedily devoures it himselfe; yea, is such a cormorant, that he will not stay the dressing of it. He is called the wolfe of the water, but is indeed a monster of nature; for the wolfe spares his kinde, but hee will devoure his own nephewes ere they come to full growth. He is very gallant in apparell, and seemes to affect to go rather in silver than in gold, wherein he spares for no cost; for his habit is all layd with silver plate downe to the foot in scallop wise. Hee is a right man of warre, and is so slender built, and drawes so little water, as hee will land at pleasure, and take his prey where he list; no shallop shall follow where hee will lead. The pikes themselves are the taller ships, the pickerels of a middle sort, and the Jacks, the pinnaces amongst them, which are all armed according to their burden. The master or pilot sits at the prore, yet hath he the rudder so at command, that hee can winde and turne the vessell which way he will in the twinkling of an eye. He sets up but little sayles, because he would not bee discovered who he is, yea, many times no sail at all, but he trusts to the finnes, his oares. The youthfuller sort of pikes, whom through familiarity they call Jacks, are notable laddes indeed, and to their strength and bigness will fish as their fathers will. In a word, a man would easily bee mistaken in him in beholding him so handsome and gentle a creature, and never imagin him to be half so ravenous as he is; but fronti nulla fides." *A strange metamorphosis of man, transformed into a wildernesse.* 1634.

Then

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Then into fish the traytors he transform'd,
The traytors, still with love of lucre warm'd,
The sailing ship for golden fragments trace,
And prove themselves deriv'd from human race. *
If running waters overflow your lakes,
There best the barbel † thrive with speckled backs;
And roach, which shoot as swiftly thro' the flood
As arrows, flying from the bending wood; ‡

From

* To the tale of lucre respecting the carp, may be not inappropriately attached "a controuersie of a conquest in loue 'twixt Fortune and Venus."

Whilst fissher kest his line the houering fish to hooke,
By hap a rich man's daughter on the fissher kest hir looke.
Shee fryde with frantick loue, they marid eke at last:
Thus fissher was from lowe estate in top of treasure plast.
Stoode fortune by and smylde: 'how say you, dame,' quoth shee
To Venus, 'was this conquest your's, or is it due to mee?'
'Twas I (quoth Vulcan's wife) with help of Cupid's bowe,
That made this wanton wench to rage, and match his selfe so lowe.'
'Not so, 'twas Fortune I, that brought the trull in place;
And fortune was it that the man stoode so in mayden's grace;
By fortune fell their loue, 'twas fortune strake the stroke;
Then detter is this man to mee that did the match prouoke."

Epitaphes, Epigrams, &c. by George Turbervile.

† "Timorous barbels will not taste the bit
Till with their tayls they haue vnhooked it:
And all the bayts the fisher can deuise,
Cannot beguile their wary jealousies."

Sylvester's Du Bartas.

‡ ——————— like as the litle roch
Must either be eat, or leap upon the shore,
When as the hungary pickerell doth approch,
And there finde death which it escapt before.

Baldwin's Owen Glendour, Mirrour for M. 1575.

A somewhat unfair and rapacious mode of fishing is occasionally adopted by anglers, who lay several rods, and have an increased number of gentles attached to each float; for which practice the only excuse is poor Cunningham's apology for breaking the sabbath, "the dinner lying at the bottom of

 the

From whence of darts they have obtain'd the name;
The mullets also love a living stream,

With

the river." To such marauders the following humourous ballad is applicable.

"You that fish for Dace and Roches,
Carpes or Tenches, Bonus neches,
Thou wast borne betweene two dishes,
When the Fryday signe was fishes.
Angler's yeares are made and spent,
All in Ember weekes and Lent.
Breake thy rod about thy noddle,
Throw thy wormes and flies by the pottle,
Keepe thy corke to stop thy bottle,
Make straight thy hooke, and be not afeard,
To shave his beard;
That in case of started stitches
Hooke and line may mend thy breeches.

He that searches pools and dikes,
Halters Jackes, and strangles Pikes,
Let him know, though he think he wise is,
'Tis not a sport but an assizes.
Fish so tooke, were the case disputed,
Are not tooke, but executed.
Breake thy rod, &c.

You, whose pastes fox rivers throat,
And make Isis pay her groat,
That from May to parch October,
Scarce a Minew can slepe sober.
Be your fish in oven thrust,
And your owne Red-paste the crust.
Breake thy rod, &c.

Hookes and lines of larger sizes,
Such as the tyrant that troules devises,
Fishes here beleive his fable,
What he calls a line is a cable;
That's a knave of endlesse rancor,
Who for a hooke doth cast an anchor
Breake thy rod, &c.

But

With powts which in the muddy bottom lie;
Menows, which constant stores of eggs supply;
Lotes, on whose chins long hairy bristles grow;
And skates and wide-mouth'd lampreys, which below
Resemble eels, but gape like frogs above;
With fragrant fish,* which murm'ring fountains love,
Sweet to the smell like thyme's delightful flow'r;
Gudgeons who gravel greedily devour;
Perch like sea mullets both in taste and smell,
And pollards which within with prickles swell;
With gaping sheaths, and plaise, whom, if their snouts
Were less obtuse, we might mistake for trouts. †
In either stream the carp contented dwells,
With plenteous spawn thro' all the year she swells,

But of all men he is the cheater,
Who with small fish takes up the greater,
He makes carpes without all dudgeon,
Make a Jonas of a gudgen;
Cruell man that stayes on gravell
Fish that great with fish doth travell.
Breake thy rod, &c.

Llewellyn's Men Miracles, &c. 1656.

* Thymallus.

† "The pike, the roach, the cheuen and the dace,
The bream, the barble with his bearded face,
The pearch, the gudgeon, and the siluer eele,
Which millers taken in their ozier weele,
Dwell in the riuer as principall fish,
And giuen to Pan to garnish thy dish;
The salmon, trout, flounder and creuise,
Doe dwell in riuers where the menow is.
The princely carpe, and medicinable tench,
In bottom of a poole themselues doe trench."

Breton's Ouran's.

And

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And in all places and all seasons breeds,
In lakes as well as rivers: hence proceeds
The name of Cyprian, which the Cyprian dame
Bestow'd; the French to carp have chang'd the name.
Of all the fish that swim the wat'ry mead,
Not one in cunning can the carp exceed.
Sometimes when nets enclose the stream, she flies
To hollow rocks, and there in secret lies:
Sometimes the surface of the water skims,
And, springing o'er the net, undaunted swims;
Now motionless she lies beneath the flood,
Holds by a weed, or deep into the mud
Plunges her head, for fear against her will,
The nets should drag her and elude her skill:
Nay, not content with this, she oft will dive
Beneath the net, and not alone contrive
Means for her own escape, but pity take
On all her hapless brethren of the lake;
For rising, with her back she lifts the snares,
And frees the captives with officious cares;
The little fry in safety swim away,
And disappoint the nets of their expected prey.*
No other fish so great an age attain,
For the same carp, which from the wat'ry plain
The Valois' seated on the throne survey'd,
Now sees the sceptre by the Bourbons sway'd;

* Thus Montaigne relates of the *Scarus* "having swallowed the fisher's hooke, his fellowes will presently flocke about him, and nibble the line in sunder; and if any of them happen to be taken in a bow net, some of his fellowes turning his head away, will put his taile in at the neck of the net, who with his teeth fast holding the same, never leave him, vntil they have pulled him out. The Barble fishes, if one of them chance to be engaged, will set the line against their backes, and with a fin they have, toothed like a sharp saw, presently saw and fret the same asunder." *Florio's translation of Montagne's Essays*, 1613, p. 266.

He

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He now beholds the children, and admires
Their dress and customs so unlike their sires.
What greater wonder would he now express
Did he but know what signal triumphs bless
Our arms, thro' all the world attended with success?
Tho' age has whiten'd o'er the scaly backs
Of the old carp which swim the royal lakes;
They, neither barren, nor inactive, grow,
But still in sport the waves around 'em throw: *

Here

* The Dialogue of Creatures moralised, being one of the scarcest works of early typography, another extract may amuse. "Dialogo xlvi. Of a fyssh callyd a carpe, and a fissh called Tymallus. It happyd in a greate solempne feste, fisshes of the floode walkyd togidre aftyr dynar in great tranquillyte and peace for to take ther recreacyon and solace; but the carpe began to trowble the feste, erectynge hym self by pryde & saynge, I am worthy to be lawdyd aboue all othir, for my flesshe is delicate and swete more then it can be tolde of. I haue not be nourished nothir in dychesse, nor stondyngh watyrs, nor pondes; but I haue be brought vppe in the floode of the greate garde. Wherfore I owe to be prynce and regent amonge all yowe. Ther is a fissh callyd Tymallus, hauinge his name a flowre, for Timus is callyd a flowre; and this Tymallus is a fissh of the see, as saith Isidore, Ethimologiarum, xii. and allthoughe that he be fauoureable in sight and delectable in taste, yet moreouir the fyssh of hym smellyth swete lyke a flowre and geuith a pleasaunte odour. And so this fyssh Tymallus, heringe this saynge of the carpe, had greate seorne of him and sterte forth & sayde: It is not as thou sayste, for I shine more bright then thowe, and excede the in odowre and relece. Who may be comparyd vnto me, for he that fyndith me hath a great tresowre. If thow haue thy dwellynge oonly in the watir of garde, I haue myn abydynge in many large floodes. And so emong them were great stryuis and contencyons. Wherfore the feste was tournyd in to great trowble, for some fauowryd the parte of the one and some of the othir, so that be lyklyhode there shuld haue growen greate myschefe emonge them: for euery of them began to snak at othir, & wolde haue torne eche other on smale pecys. Ther was monge all othir a fissh callyd Truta euyr mouyd to breke stryfe; and soo thys trowte for asmoche as she was agid, and wele lernyd, she spake and sayde: Bredryn, it is not good to stryue & fight for vayne lawdatowris and prayseers; for I prayse not my self though some personis thinke

Here safe the depths no longer they explore;
But, their huge bulk extending near the shore,
Take freely from our hands what we bestow,
And grace the royal streams at Fountainbleau:
But, chiefly they rejoice, when, near the side,
Great Lewis walks, and as in youthful pride,
Strong both in body and in mind remains,
And all youth's vigour ev'n in age retains:
We could not think he sixty years had reign'd,
Did we not count our gains by sea and land;
Or view his grandsons round the monarch stand.
Tho' the rich pike, to entertain your guest,
Smokes on the board and decks a royal feast;
Yet must you not this cruel savage place
In the same ponds that lodge the finny race:
In the same tow'r you might as well unite,
The fearful pigeons and the rav'nous kite;
In the same yard the fox with chickens keep,
Or place the hungry wolf with harmless sheep.
For he, the tyrant of the wat'ry plains
Devours all fish, nor from his kind abstains;

thinke me worthy to be commendid; for it is wryttyn, the mowth of an othir man mote commende the and not thyn owne, for all commendacyon and lawde of hym self is fowle in ye. mouth of the spekar. Therefore bettyr hit is that those that prayse them self goo togider to the see iuge, that is, the Dolphyn, which is a iuste iuge and a rightfull and dredinge god, for he shall rightfully determyn this mater. This counsell plesyd them well, and forth went these twayn togider vnto the Dolphyn and shewyd to him all ther myndes, and to ther power comendid the self. To whom the Dolphyn sayde: children, I neuyr sawe yowe tell this tyme, for ye be alwaye hydde in the floodes, and I am steringe in the great wawys of the see; wherfore I cannot gyue ryghtfull sentence betwene yowe, but yf I first assaye and make a taste of yowe. And thus saynge, he gaue a sprynge and swalowyd them in both two, and sayde,

Noman owith hym self to commende,
Aboue all other, laste he offende.'

Unless

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Unless hoarse frogs infest the fenny place;
For then he feasts on the loquacious race;
Dragg'd from the filthy mud, they croak in vain,
And with loud babblings ev'n in death complain.
Or when a goose sports on the azure wave,
Delighting in the stream her limbs to lave,
Or dips her head, and with a clam'rous sound,
Provokes the rain, and throws the water round;
The pike arrests the fowl with hungry jaws,
And to the bottom of the river draws;
Nay, as a boy in the smooth current swims,
His teeth he fixes in his tender limbs. *

* Sir John Hawkins, in his notes on Walton, has given several stories of the voracity of this fish. The diurnals, which seldom neglect to propagate the marvellous, in the year 1800 related, that "a yearling calf was heard to make an uncommon noise by the side of the river Blackwater, where it had been drinking; on going up to it, there was a large pike hanging to its nostrils, which had seized the calf while it was drinking, and which the animal had dragged about fifty yards from the river. One of the people disengaged them, by striking the pike with a stone which killed it. There were found in the belly of this voracious fish, a large rat, a perch entire, besides part of several other fish. The pike weighed 35 pounds." The conclusion of the story, proving there was no provocative from hunger, renders the veracity of the first part doubtful; otherwise similar relations have been made. A common-sized Jack, placed by mistake on the wrong side of the division in a keep, destroying in a few hours near thirty gudgeons, (a small brace of perch escaping) is a circumstance within my own knowledge; but, whatever may be its propensity for the gudgeon, the reader must decide the credit due to a newspaper of 1801 for the following story. "A party angling at Sunbury, one of them sat across the head of the boat, as a punishment inflicted on him for wearing his spurs. Another having caught a gudgeon, stuck it on one of the spurs, which he not perceiving, in about a few minutes a large jack bit at the gudgeon, and the spur being crane-necked, entangled in the gills of the Jack, which, in attempting to extricate itself, actually pulled the unfortunate person out of the boat. He was with difficulty dragged on shore, and the fish taken, which was of a prodigious size."

The

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The trout loves rivers in obscure retreats;
Thrown into standing water, she forgets
Her former beauty, and neglects her love,
And all the flesh will then insipid prove;
From hence remember, with a timely care,
For trout a running water to prepare:
Near some wide river's mouth a place provide,
And with smooth grass and turf adorn the side;
Let the clear bottom shining gravel show,
And gently murm'ring o'er smooth pebbles flow.
This situation always grateful proves,
For still the trout a murm'ring current loves,
And still the same desires her bosom warm,
Nor has she chang'd her manner with her form:*

For

* The following extract from a modern poem disguised with antique semblance, is too appropriate to the history of the trout to be omitted.

——"When atop the hoary western hill,
The ruddie sun appears to rest his chin,
When not a breeze disturbs the murmuring rill,
And mild.ie warm the falling dewes begin,
The gamesome trout then shows her silverie skin,
As wantonly beneath the wave she glides,
Watching the buzzing flies, that never blin,
Then, dropt with pearle and golde, displays her sides,
While she with frequent leape the ruffled streame divides.

On the green bank a truant school-boy stands;
Well has this urchin markt her mery play,
And ashen rod obeys his guileful hands,
And leads the mimick fly across her way;
Askaunce, with listly look and coy delay,
The hungrie trout the glitteraund treachor eyes,
Semblant of life, with speckled wings so gay;
Then, slyly nibbling, prudish from it flies,
'Till with a bouncing start she bites the truthless prise.

Ah, then the younker gives the fatefull twitch;
Struck with amaze she feels the hook ypright

Deepe

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For once she liv'd a nymph of spotless fame
In an obscure retreat, and Truta was her name.
It chanc'd that in a flow'ry path she stray'd,
Where a clear river with the pebble play'd,
And just disturb'd the silence of the shade.
Truta now seated near the spreading trees,
Enjoys the coolness of the passing breeze;
In the clear stream she casts her modest eyes,
And in a fillet her fair tresses lies.
While in this solitude she thus remains,
And dies her beauteous face with various stains;
It chanc'd the robber Lucius, thro' the shade,
With eager eyes perceiv'd the lonely maid;
He saw and lov'd her riches, on her face,
For both her dress and form appear'd with equal grace.
The nymph now heard the rustling with affright;
She saw a man, and trembled at the sight;
Swiftly along the winding shore she fled,
And cry'd, and vow'd, and call'd the gods to aid.
Truta despairing sought, with trembling speed,
A rock that overlooked the wat'ry mead;
Hither she bent her course, the summit gain'd,
And thought her virtue now might be maintain'd

Deepe in her gills, and, plonging where the beech
Shaddows the poole, she runs in dread affright;
In vain the deepest rocke her late delight,
In vain the sedgy nook for help she tries;
The laughing elfe now curbs, now aids her flight,
The more entangled still the more she flies,
And soon amid the grass the panting captive lies.

Where now, ah pity! where that sprightly play,
That wanton bounding, and exulting joy,
That lately welcom'd the retourning ray,
When by the riv'lets banks, with blushes coy,
April walk'd forth—ah! never more to toy
In purling streams, she pants, she gasps, and dies!"

Mickle's Syr Martyn, Can. I.

Cheaply

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Cheaply with loss of life: while here she stood,
And just prepar'd to leap into the flood,
Lucius approach'd, and while he held behind
Her flow'ry vest, that flutter'd in the wind,
Chang'd into fish an equal fate they bore,
And though transform'd in shape, yet, as before,
The pike of slaughter fond and fierce appears,
And still the trout retains her female fears!
Beauty and virgin modesty remains,
Diversify'd with crimson tinted stains;
And, once the fairest nymph that trod the plain,
Swims fairest fish of all the finny train. *
Not pikes alone defile the streams with blood,
But over all the brethren of the flood,
Perpetual discord bears tyrannic sway,
And all the stronger on the weaker prey.
As among men the great the small oppress,
And still the same confusion and distress,
Which in the city and the forest reign,
Distract the tenants of the wat'ry plain.
Banish'd from earth, peace could not find a place
Beneath the streams, among the finny race;
But, since for want they otherwise would die,
Regard this fury with indulgent eye.
Why need I mention all the waste of blood,
Which the fierce otter causes in the flood;
Among the willows secretly he lies,
And from the shore surveys, with eager eyes,

* "To observe the ravenous disposition of the pike, the sociable condition of the trout, the various discolouring of the polypus, the strong digestion of the porpoise, would beget in the curious surveyors of nature, much admiration. And then to compare the natures of these water inhabitants with ourselves, who follow, for most part, the bent of our desires, as if we were estranged from that beauty which incomparably most adornes us, and drenched in the leas of our owne corruptions, which makes man most unlike himselfe, by idolatrizing that which gives the greatest blemish to his excellence." *Braithwait's Nursery for Gentry*, 1638.

The

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The sport or battles of the wat'ry breed,
And swiftly swimming with resistless speed,
Defeats the hostile bands, and makes the warriors bleed.
Few deaths assuage the hunger of the foe;
No bounds his hate and savage fury know;
The fish he bowels, stains the stream with blood,
And mangled bodies float upon the flood:
The otter heaps in caverns of the shore
The fish half eaten and besmear'd with gore;
Of slaughter proud, he there delights to dwell,
And the long night enjoys the nauseous smell.
Snares for the beast, and gins, let others lay,
Or into traps by tempting baits betray;
But you with missive weapons in your hand,
Conceal'd from view behind a thicket stand;
And while on fraud he muses on the shore,
Or tir'd returns with jaws besmear'd with gore,
The felon slay, and throw into the flood
His wounded body for your fishes food:
But first tear off the skin (for fear your fry
Should from the dead, as from the living fly,)
Which some rich matron will rejoice to buy.
If you should find the young ones, steal away,
In th' absence of the dam, the tender prey,
And by his youthful years yet pliant, breed
The gentle otter to the fishing trade;
For when suspended in the stream you place
Your flaxen snares, to catch the finny race,
He will explore each cavern and retreat,
And rouse the fish, and hunt them to the net:*

As

* "It is a very crafty and subtill beast, yet it is sometimes tamed, and vsed in the northern parts of the world, especially in Scandinauia to driue the fishes into the fishermen's nets: for so great is the sagacity and scence of smeling in this beast, that he can directly winde the fishes in the waters a mile

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As dogs drive trembling stags into the snare,
Or by the scent pursue the fleeting hare.
In these amusements while I pass the day,
Autumnal hours roll unperceiv'd away;
When tir'd of town and study, I retreat,
My honour'd friend, * to thy fair country seat;
Where you with all the rural sports invite,
But most with mirth and attic wit delight;
For tho' your seat, which from the neighb'ring stream
Derives its name, is first in my esteem;
Yet, in your absence, nor the flow'ry beds,
Nor silver floods can please, nor painted meads,
Nor ev'n the stream which in a mournful strain
Appears with me to murmur and complain;
No longer now the verdant laurel grove,
Where oft, in contemplation wrapt, I rove,
Can without you poetic thoughts inspire,
Or reconcile me to the tuneful quire.
When pleasure to the plains returns with you,
Together oft we take delight to view
Th' obsequious otter, thirsting after blood,
Chase thro' the stream the natives of the flood;
Or near the stew, which with a bounteous hand
Your ancestors prepar'd, together stand

mile or two off, and therefore the fishers make great aduantage of them, yet do they forbeare his vse because he deuoureth more then needeth, for he is neuer so tamed that he forgeteth his old rauening; being tamed, on the land he is very full of sport and game..... The flesh of this beast is both cold and filthy, because it feedeth vpon stinking fish, and therefore not fit to be eaten. Tragus writeth that this notwithstanding is dressed to bee eaten in many places of Germany. And I hear that the Carthusian fryers, or monkes (whether you wil,) which are forbidden to touch al maanner of flesh, of other foure-footed beasts, yet are they not prohibited the eating of otters," *Edward Topsell's Historie of foure-footed beastes.* 1607.

* Duke de Ressegeuer.

To

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To see him dive for food, and joyful draw
The gasping captives from his bloody jaw.*

Among

* Could an animal be thus tutored for use on the sea coast, in addition to the amusement, it would save many qualms to the summer excursionist.

" Whyle gale of wynde the slacke sayles filles full strayte,
He leaning ouer hollow rocke doth lye,
And either his begiled hookes doth bayte,
Or els beholdes and feeles the pray from hye;
The trembling fish he feeles with line extent,
*And* paised hand " Hercules Furens, 1581.

This is a pigmy's mimic of the

" —— day (a day as fair as heart could wish)
*When* giant stood on shore of sea to fish;
For angling rod, he took a sturdy oake,
For line a cable, that in storm ne're broke;
His hook was such as heads the end of pole,
To pluck down house, ere fire consumes it whole;
His hook was baited with a dragon's tail,
And then on rock he stood, to bob for whale;
Which strait he caught, and nimbly home did pack
With ten cart load of dinner on his back."

The last lines, with trifling alteration are inserted in the Poetical Works of Dr. King, born 1663, but certainly not the production of that facetious writer. They are copied from the mock romance printed with " The Loves of Hero and Leander, and other choice pieces of drollery, &c." 1653. From a ballad in the same collection, which appears to have been made on the setting fire to London-bridge, the following humourous stanzas are selected.

" Into the chips there fell a spark
Which *put out* in such flames,
That it was known into Southwark,
Which lives beyond the Thames.

For *loe* the bridge was wondrous *high*,
With water underneath,
O're which as many fishes fly,
As birds therein doth breath.

And yet the fire consum'd the bridg,
Not far from place of landing;
And though the building was full big,
It fell down *not with standing*.

And

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Among the sportive tenants of the lake,
Wide havoc water-rats and beavers make:
These foes with subtlety alone pursue:
If from the shore you at a distance view
A beaver plunge into the stream, in vain
You'll hope by darts a conquest to obtain;
The conscious robber dives beneath the flood,
Nor to the bank returns where late he stood.
If reeds and rushes should your lakes infest,
Cut not away the heads and leave the rest;
The stems corrupt, if suffered to remain,
And from the roots fresh crops appear again:
But with a little skiff destroy the reeds;
With gloves upon their hands some hold the heads,
With stretch'd-out arms, against the adverse waves;
While others row with oars; or with long staves
The boat together with the rushes strove,
And to the shore the reedy forest move.
Since nothing to the natives of the flood
Is more destructive than the want of food,
Throw grains of corn, or scatter crumbs of bread,
And if, of some unknown distemper dead,
You chance to find a sheep, or in the yoke
An ox should yield to death's untimely stroke,
To feast your hungry fish their bodies throw,
Or pounded acorns and cheap pulse bestow;
With figs by constant show'rs corrupted grown,
And apples from the trees untimely blown:
For famine will compel the wat'ry breed
Like beasts on flesh, on grass like sheep to feed,
With fruit like birds to fill their hungry maw,
And on their kind to rush with greedy jaw.

And eke into the water fell,
So many pewter dishes;
That a man might have taken up very well
Both boyld and roasted fishes."

The

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The eel, swift-gliding thro' the wat'ry plain,
Devours the fry, and smaller finny train,
And smelts, and gudgeons, seek the shore in vain.
In bulk with years while other fishes rise,
Why gudgeons, loach, and smelts are small in size,
And still the old continue dwarfs, relate
The rise, ye Muses, of the minim state.
Where, with a tardy current, near the sea,
The Po in slow meanders takes its way,
A band of children on the borders stood,
Engag'd in play, and in the silver flood
Threw stones, which, sliding on the wat'ry plain,
Now seem to sink and now emerge again.
Beneath the stream the sisters of the sea
Then list'ning sat to Clio's tales, whom she
Amused with amours of absent Ephiré.
When Ægle first the dashing pebbles heard,
She at the surface of the stream appear'd,
Enjoin'd the boys to leave the river's side,
And added threats; they bold her threats defy'd,
And casting impious stones, in scorn they cry;
"Lo, thus to your complainings, we reply!"
Ægle affrighted soon return'd again,
And filling with her shrieks the wat'ry plain;
"Ye gods shall this audacious crew," she cries,
"Who me with taunting words and stones defies,
Escape unhurt? shall youth their crime excuse?
No age unpunish'd must the gods abuse!
Call then a monster from the neighb'ring main,
To wreak our vengeance on the impious train."
She said, and Ocean to the sisters gave
A dreadful form, which rose above the wave.
The boys beheld and trembled at the sight,
And try'd to fly, but fear arrests their flight;
Breathless they fell, their limbs the monster tore,
And in the river cast 'em from the shore;

Then

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Then shook his head, and in the silver flood
Wip'd from his dropping jaws the streaming blood.
The nymphs the slaughter saw and heard the cries,
And feasted with revenge their eager eyes.
What female heart but may by youth be gain'd?
And beauty in the boys that still remain'd
Like a fair flow'r which yielding to the share
Reclines its drooping head, but still continues fair.
How credulous is Love! * they see the shore
O'erspread with bodies, all besmear'd with gore,
Yet hope by fear they fell, and signs of life explore;

Their

* Flecknoe, in the character of a young female enamorist, says, "it is with lovers as it is with anglers, who feed fishes till they are caught, but caught once, feed on them; so it will be long enough ere she bite at the bait, unless he has more to bait her with than fine words or lamentable compliments." Upon the subject of love the angler's muse seldom drags a simile from the tackle; or floats the lines in a stream of sorrow to bait a barbed hook with a gentle heart. Turbervile introduces an allusion to the art, where he writes in "dispraise of Women that allure and loue not."

"That troupe of honest dames
those Grisels all are gone;
No Lucrece now is left aliue,
ne Cleopatra none,
Those dayes are all ypast,
that date is fleeted by:
They myrrors were, dame Nature made
hir skilful hande to try.
Now course of kinde exchaungde
doth yeeld a woorser graine,
And women in these latter yeares
those modest matrones staine.
Deceit in their delight,
great fraude in friendly lookes:
They spoyle the fish for friendship's sake,
that houer on their hookes.
They buye the baite to deare
that so their freedome loze;
And they the more deceitfull are,
that so can craft and gloze."

The

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Their hands the heart, no longer beating, try,
Or their fair fingers ope th' unwilling eye;
Another seeking whether yet the breath
Hangs on the lips, nor quite extinct by death,
Joins her's to their's, compassionately kind,
And leaves, unseen, a tender kiss behind.
But these their cares were vain, for death's cold hand,
Had clos'd the eyes of all the youthful band;
And now their weeping ghosts were seen to gain
The darksome realms of Pluto's dreary reign:
With pray'rs and tears stern Charon they implore,
To take and waft them to the Stygian shore;
And if or youth or beauty could prevail,
His breast had melted at their mournful tale.
The nymphs, with pity mov'd, the gods implor'd
That to their bodies life might be restor'd;

The contrariety of love is also thus depicted in the sign Cancer, fourth book of Palengenius, translated by Barnaby Googe.

"——— if so be that loue weare not
by God's aduisement right,
To euery man apoynted here,
by limites parted iust:
No dout of al might one be loued,
and on them all should lust,
And euery man might safe enioy
the damsel that he likes:
But as the fisher doth not take
the fishes all in dikes;
Nor foulers all the birdes do catch,
nor hunters all do kill;
But euery one his chance doth take,
obtaines, and hathe his will;
So, loue to euery one is delt
by God's arbitrement;
So doth the seruaunt, base, ful oft
his lady wel content."



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But when their pray'rs the gods no longer heard,
They draw 'em in the stream to be interr'd:
Soon as their lifeless limbs had touch'd the wave,
Another form they to the children gave:
Each hand contracted in a fin appears,
And the rough skin a scaly substance wears;
The form of a hook'd tail united, took
Their feet and legs; the tenant of the brook
To stem the adverse waves unceasing tries;
Resembling youth in manners and in size.
For these are always small: by turns we see
They sport and fret, now quarrel, now agree;
And still like what they were before remain,
Peevish in play, yet loath to leave the train.
Now to the caution of the Muse attend,
Your fish from nightly robbers to defend;
Boards at the bottom arm'd with spikes prepare,
To catch the net and disappoint the snare.
But those are most destructive, who, with food,
Throw poison mixt or lime into the flood;
Soon as infected, tortur'd with the pain,
The fish shoots swiftly thro' the wat'ry plain;
Or giddily in various circles swims,
And just the surface of the water skims,
To fan his lungs with draughts of vital air,
And cool the scorching heat that rages there.
But still the pois'nous drugs his breast torment;
And now his strength is gone, his vigour spent;
Now he sucks in his last remains of breath,
Supinely floating on the waves in death.
Ev'n the dire author of the mischief grieves,
When, for a paltry gain, he thus perceives
The lakes exhausted of their scaly breed,
And blames the arts from whence such ills proceed.

Now

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Now that your stew-ponds may with ease afford
Supplies of fish, well-fatted for your board,
With a slight wall a narrow place enclose,
Where the full river from its channel flows;
The tinkling of the stream, or sav'ry bait,
Will tempt the fish to try the sweet deceit;
The wickers opening readily admit
The breed, but never their return permit:
Here to your captives plenteous dainties throw,
Which soon will thrive and fit for table grow.
Some few years past, as all good Christians feed
In spring-time only on the scaly breed; *

Let

* "Fishes are like their element, and place
Wherein they live, both cold and moist, a race
Of flegmatic creatures, yet they are meat
Which dry and choleric tempers may well eat;
And those who would look smug, or else snout-fair,
May take this liver-cooling dish for fare.
In fervid seasons, and in climates hot
Use them: but if the Beare the helm hath got,
Or under Charles his seven-starr'd heavy wane,
From this dull nourishment let them refraine.———
Sweet river-fishes slimy, and gross diet,
Are glibbery, and make egression quiet,
More nourishing than sea-fish, and of these,
Those (which the current streams and gravel please,
And do abhorre annoyances of sinks,
Which spoil their channels with their loathsome stinks)
Are most delicious, such as pearch and trout;
Your mud-fish all incline you to the gout.
But those delighting in sweet scowres, refine
Their squamy sides, and clarifie their line."

Gayton's Longevity.

"Another remedy against the dearth of things, especially victuals, is to restore the vse of fish to the ancient credit and estimation: and hereupon *Bodine* taketh occasion to commend our custome of England for obseruing fish dayes in the weeke. And for effecting of the like in Fraunce, he propoundeth

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Let out the water from your open'd lake,
And all the finny race in baskets take:
The water rushes out, the dams and mounds
Remov'd, thro' valleys and o'er stones resounds,

poundeth the example of the prince and magistrate whom the people will imitate. We may wish that both the one and the other were duly executed or obserued, whereby fishing would be better maintained, and most especially the nauigation: and flesh would in some seasons of the yeare be vsed more commodiously, and better for the health of man. The great number of all sorts and kinds of fish according to the obseruation of the Romaines (noted by Maister Bodine) ought to moue vs thereunto; fish being so pure a creature, that were it not, that we see the same subiect vnto diseases, it wold be very doubtfull, whether the same amongst other creatures was cursed for man's transgression, the scripture speaking only that the earth was cursed therefore: considering also the prouerbe, *as sound as a fish*; and if any be subiect to diseases it is fish of riuers, or of standing waters and fish-ponds, which may be cured by strawing much parsley into the water. And because that flesh and fish are two principall things for the food of man, and that our purpose is not to omit any thing, that incidently may be handled for the good of the commonwealth, therefore will it not be exorbitant the rule of our methode to discourse somewhat thereof. The best season of the yeare to eate fish is from September vntill March, if we will regard the goodnesse of the fish: howbeit that for the increase of beasts, we are commanded with great reason and consideration, to eate most fish in March and Aprill, when he loseth his taste. The fresh fish of riuers is of more digestion, and better for sicke persons; but the sea-fish is of more nourishment. All fish being moist and cold of nature, is qualified by the addition of salt, and being eaten with much bread cannot do any hurt, especially vnto cholericke persons, with whose complexion it agreeth best. And whereas all other creatures do first decay and putrifie in the belly, the fish doth first putrifie in the head: for no otherr reason, but that hauing only one gut the meate doth easily passe the same, without digestion or corruption; which by staying long with other creatures causeth putrifaction: an argument that fish is more healthfull then flesh, howbeit that (through the continuall vse) flesh is more agreeable with our nature." *England's viewe, in the vnmasking of two paradoxes: with a replication vnto the answer of Maister Iohn Bodine, by Gerrard de Malynes, Merchant. Oct.* 1603.

And

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And swells the streams admiring, without rain,
To see their waves roll swiftly to the main.
Meanwhile the wand'ring fish swims up and down
Confus'd, and when the stream is almost gone,
Still follows the remains; whom, from the lake
Sliding, the wicker snares a captive make:
Here with his much-lov'd stream, his life he leaves,
And his last parting breath the air receives.
Lest the whole breed should undistinguish'd die,
Take the small fish that at the bottom lie,
In a new pond the little wand'rers place;
And there preserve the hopes of all the race.
They swim surpris'd, the vacant lakes survey,
And all their father's wat'ry empire sway.
The ponds now drain'd, the cautious eel lies roll'd
Deep in the mud, and wound in many a fold.
While here he lurks, conceal'd beneath the ooze,
With griping hand the smooth deceiver close; *
Lest he, like fortune, when you think the prey
Securely your's, should subtly glide away.
No sweeping drag-net should the race alarm,
That through your streams, congenial breeding swarm;
Lest you destroy young natives of the flood,
And all your fruit prove blighted in the bud;
Bow nets still use; or, in a darksome night,
Fires on the margin of the river light;
Struck with the dazzling flame, ne'er seen before,
Surpris'd they slow approach the shining shore;

* Sero sapiunt Phryges.

"The prouerbe saieth, so longe the potte to water goes,
That at the lengthe it broke returnes, which is appli'de to those,
That longe with wyles, and shiftes, haue cloaked wicked partes,
Whoe haue at lengthe bene paied home, and had their iust desertes;
Euen as the slymie eele, that ofte did slippe awaie,
Yet, with figge leaues at lengthe was catch'de & made the fisshers praie."
Geffrey Whitney's Emblems, 1586.

While

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While thus for knowledge greedy they appear,
Or to the crackling billets lend an ear,
Insnare with nets, or fix 'em with a spear. *
Still other arts your leisure may employ,
Amusement yield, nor all the race destroy:
On the green margin dark secluded stand
A taper angle waving in your hand;
The wand'ring prey with choicest bait invite,
And fatal steel conceal'd by art from sight. †

Once

* "The glow-worme shining in a frosty night,
Is an admirable thing in shepheard's sight.
Twentie of these wormes put in a small glasse,
Stopped so close that no issue doe passe;
Hang'd in a bow-net and suncke to the ground,
Of a poole, or lake, broad, and profound:
Will take such plentie of excellent fish,
As well may furnish an Emperor's dish."

Breton's Ourania.

† To Anglers.

"O take away that wily, treach'rous hook!
Why are the harmless tenants of the brook
(Secure, poor things, till now, amongst each other)
To be of cold barbarity the sport?
Perhaps each fish that from the flood you court,
May mourn its parents kind—a sister—brother.
It makes Humanity, sweet maiden! weep
To see the wanton sportives of the deep
Torn from the pleasures of their silv'ry bed:
It makes her sigh, to mark the dipping float
The hidden captive's agony denote,
And all its sweet and social comforts fled.
I love to see the gudgeon and the bream
Thread the wild mazes of their native stream,
And unmolested through each thicket stray;
I love to see the dace, in shining pride,
Now rush amidst the fierce, impetuous tide,
And now upon the tempting surface play.

The

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Once on the grassy border of a flood
A boy, and round a youthful circle stood,
With floated line, and rod, did next prepare,
The 'guileful charm to hide the barbed snare;
The boy commanded silence with a nod,
And threw his twisted line into the flood:
By chance a mullet in the stream appear'd
Large, and conspicuous by a length of beard:
He nibbled at the bait in sportive play,
And then refusing seem'd to swim away.
Now with the current down the stream he glides
Now with his tail the adverse waves divides;

The worm that writhes, too, on the barbed steel,
Knows not less pain than does the culprit feel,
When legal vengeance drags him to her den:
His well-knit limbs, his nerves, his sinews firm,
Defy not torture better than a worm—
Reptiles are flesh and blood as well as men.

'Tis not for man to lift his murd'ring arm
Against the artless, unoffending swarm,
To wage unequal combat with a fish:
So much, believe me, liberty I prize,
I'd rather on their freedom feast my eyes,
Than view them smoaking on the glutton's dish.

Enough for me if, while I roam at ease,
And taste, sweet Isis, on thy banks, the breeze
That wantons there, upon her silken wings,
Health's genial hand its bounty shall bestow,
And on my cheek impress the livid glow,
And all the charms the lovely goddess brings.

Farewell, my rod, and to my lines farewell,
No more shall sports like these my bosom swell—
No more shall ye to cruelty invoke me:
Perhaps some fish, with patriot rage may burn—
Perhaps some trout be savage in its turn—
And, dying for its injur'd brethren, choak me." J. T.

But

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But soon returns the odour to regain,
And winds in circles through the wat'ry plain;
Thus heedless moths display their painted wings,
And flutter round the flame which sure destruction brings
Meanwhile the boys, attentive, scarce appear
To breathe, by turns inflam'd with hope and fear;
Now certain, now despairing of their prize,
On this alone they fix their greedy eyes;
At length fear yields to hunger, and the bait
He credulously swallow the deceit
Soon by his blood discovering, he in vain
Attempts to void the hook and ease the pain;
When, from his mouth the steel he would withdraw,
Deeper the steel is rooted in his jaw;
The fisher jerks his rod, with nimble hand,
And throws the mullet gasping on the sand;
He, looking on the river in despair,
Leap'd slightly twice or thrice into the air,
But when his strength unable now he found
To lift his ponderous body from the ground,
Flapping his tail upon the bank in death
He struggling panted and resign'd his breath;
Not one there was of all that there appear'd,
But touch'd the fins and gently strok'd the beard.
Here then a boy, that stood upon the strand,
Thus with a tale amus'd the youthful band:
Barbus, whose name was from his beard deriv'd,
Had almost at an hundred years arriv'd;
Now weak with age and stooping to the ground,
His brow was rugged and with wrinkles crown'd:
His mouth was wide, his feeble head hung down,
His teeth were lost, his hands were bony grown;
Thick on his chin a bunch of hair remain'd,
And his weak steps a knotty staff sustain'd.
Oft, in his youthful years near streams he stood,
And cast his lines and nets into the flood.



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And as we find that length of years destroys
The strength, but not the love of former joys,
He, tho' grown old, resorted to the shore,
And haunted still the streams he lov'd before;
Still was he pleas'd and eager to betray,
With hooks conceal'd by baits the finny prey.*
As once the old man, on a river's side,
Aim'd at a fish that near the shore he spy'd;
His tottering footsteps fail'd to keep their hold,
And headlong from the slipp'ry bank he roll'd;
Now with the rapid current he contends,
Large draughts of water swallows, and extends
His feeble arms, but, hoping most to gain
By pray'rs success, he vows but vows in vain.
His breathless body, floating down the brook,
Great Jove beheld, and kind compassion took:
"Live still," he cry'd, "but in the stream remain,
And dwell for ever with the finny train;
Death was so near at hand, you need not grieve
For a short space a feeble trunk to leave."
Now forth his arms as leathern fins extend,
And in a tail his feet contracted blend;
The form of scales his tatter'd garments wore;
His back look'd dry and wither'd as before;
Still on his chin a length of beard remain'd,
His teeth he lost, but harmless gums retain'd,
These, in a fish, the marks of age are deem'd,
For age alone the mullets are esteem'd;
And length of years, by which all other things
Decay, to these increase of honour brings.

* "The angler's sport is full of patience, and if he lose his hooke, he makes a faire fishing.

The fish in the river is not afraid of drowning, and if he play with a baite it will cost him his life."

*Wit's private wealth, stored with choise of commodities to content the minde*, by N. Breton. 1639.



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I to the fable lent a list'ning ear,
And thus began; when I both see and hear
The various arts of fishers, and survey
How they the fish deceitfully betray,
Reflect I must with equal grief and truth;
That the same arts deceive unwary youth,
The snares, of old for fish alone design'd,
Are now employ'd to captivate mankind;
Man catches man, and by the bait betrays*
With proffer'd kindness, or, still cunning, lays
Nets to entrap th' unwary, and embroils
Cities and towns to profit from the spoils.
For you, dear youths, soft pleasure lies in wait,
And hides her hook beneath a honey'd bait,
But all her treach'rous gifts will only gain
For a short joy a lasting load of pain.
Here when the bait allures the fish to taste
The transient pleasure of a sweet repast,
You see for this how dearly he must pay;
Life is the purchase, and himself the prey.
Thus soft allurements serve to varnish o'er
The frauds of pleasure, unperceiv'd before;
But if a youth is once inspir'd, he'll find
He cannot void the poison from his mind;
No more than could the fish when snar'd withdraw
The crooked steel from his tormented jaw;
While lasting grief for short delights he gains,
Still rues his transient joys with ever-during pains. †

* "Think when thou seest the baite
whereon is thy delite,
That hidden hookes are hard at hande
to bane thee when thou bite." Turbervile.

† "Fyshe, hyghte pisces, and hathe that name of Pascendo, fedynge, as Isodore sayth libro xii. ca. vi. Fyshe licketh the erthe and watry herbes, & so get they meete and nouryshynge. Also they benne called Reptilia, crepynge

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crepyng, bycause in swimmynge they seme as they did crepe: for in swymming they crepe, though they synke downe to the bottom. Wherof speketh Ambrose in Exameron, and saythe, that bitwene fyshe and water is great nighnes of kynred. For withoute water they may not long lyue; and they lyue not longe with onelye brethynge, withoute drawynge of water. And they haue a maner lyknes and kynd of crepyng, for, whyle a fyshe swymmeth, by shrynkyng and drawynge together of his body, he draweth and gathereth hym selfe in to les length, and anone stretcheth hym selfe agayne, and entendeth to passe forth in the water; and by that dyligence he putteth the water backewarde, and passeth itself forwarde. Therfore he vseth finnes in swymmynge, as a foule vseth fethers in fleenge. But all other wyse in swymmynge a fyshe meueth his fynnes fro the hynder parte dounwarde, and as it were with armes, or ores, he clippeth the water, & holdeth it, and stretcheth hym selfe forwarde. But a byrde meueth his fethers vpwarde, and gadereth thayre, and compelleth it to passe out backeward by large stretchynge of wyndes, and so by violente puttynge of ayre backewarde the bodye meuith forwarde. And kyndes of fyshe ben dyuerse in many maner wyse ..... Some abyde only in the see, and some in ryuers and pondes, and in other freshe waters, and some ben meane bytwene these two maner fyshes, and torne and come now to fresh water, and nowe to salte water to gette them meate. And fishe that come out of the salte water in to freshe haue lykynge in the freshenes therof, and ben fattid: and ayenwarde, and this fyshe nowe abydeth in the see & nowe in freshe water. And manye ryuer fyshes maye not taste saltnesse of the see, for if he catchyth salte water, he dieth sodaynely, and torneth vp the wombe, and fleteeth aboue the water, & that is token of death in all manner of fyshe both of see and of freshe water. And fyshe that is bredde in the see hath hard scales and thycke, bycause of drynes of the salte water; and ryuer fyshe haue subtyll scales and neshe backe bones. Back bones in fyshes ben nedefull to restreyne the fleshe therof that is fletynge, for kynde neshenesse therof. And Auycen techeth to chese good fyshe by kynde of the place wherin they ben noryshed and fedde. And in H. ii. ca. vii. he sayth, that in this maner choys of fyshe is in place, in whiche hit dwelleth. For suche as abyde in stonye places ben beste and swetest, and in freshe rennynge water, in whiche is no corrupcion, ne no slyme, ne wose, nor stondynge lakes, ne in welles, nor in small pyttes that renne not in riuers, in whom ben noo welles. And he saythe there, that some see fyshes ben good; for those that ben subtyll ben beste, and ben nourished in the depe see and no where elles. And fyshe that abyde in waters, that ben vnheled with blastes of wynde, that bloweth the water somtime fro them, are better than those that ben not so serued. And those that ben in waters that ben strongly meued and continually

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tinually labored, benne better than those that ben in standynge water. And soo see fyshe is better than ryuer fyshe. And ryuer fyshe better than lake fishe, namely if they ben ferre fro the ryuers and fro the see. For they that haue rest in theyr rotynnes & filthe, are not washed nother clensed by ryuer that cometh therin, nor by see. And therfore suche fyshe is euyll sauoured, and soone roten. Also both see fyshe and ryuer fyshe is better in the northe see, and in the east see, than in the south see, for by stronge blastes of wynde the water is moued and clensed and made subtyll. And therefore fishe of that water meueth more and trauayleth, and ben more clensid of their superfluitie." *Anno M D XXXV Bertholomeus de proprietatibus rerum. Londini in aedibus Thomae Bertheleti regii impressoris. Cum privilegio a rege indulto. Folio.*

THE END.

T. Bensley, Printer,
Bolt Court, Fleet Street, London.

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Will. Br Burrup. Compts To
Mr J. K.

# OBSERVATIONS

ON THE

# PUBLIC RIGHT OF FISHING

BY ANGLE OR NETS,

IN

# PUBLIC NAVIGABLE RIVERS IN GENERAL,

AND

# The River Thames

IN PARTICULAR.

WITH NOTES, HISTORICAL AND EXPLANATORY,

BY PISCATOR.

Suum cuique tribuito.

MARLOW:
PRINTED FOR THE AUTHOR,
BY G. CANNON.

1826.

O

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# PREFACE.

It has long been a disputed point, as well amongst theologians as others, "whether it be justifiable to do wrong, that good may arise out of it;" and I confess the question has frequently arose in my own mind previous to the publication of the following sheets. It has, however, as frequently occurred to me, that I had only the choice of two evils; namely, that of submitting in common with a large portion of my fellow-subjects to being deprived of, or at least much restricted in, the exercise of a right which appeared to me secured by the laws of the country; and witnessing a continuation of a system for the destruction of

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fish and fishing, by parties illegally claiming an exclusive privilege of doing so, in the manner described in a subsequent page; or by publishing the present work, run the chance of admitting, what is generally called, the common poacher, to the right of fishing with nets.

The *first* appeared to me a *certain* evil, and was frequently attended with numberless vexatious proceedings on the part of the persons claiming an exclusive privilege against *those* who caught a few fish merely for amusement, and whose legal right to do so was equal to their own; while the supposed privileged persons were by illegal means destroying fish by cart and waggon loads for no earthly good whatever; and thus, not only doing a great public injury, but depriving a large portion of society of a pleasing and legal amusement.

The *other* appeared merely a *possible* evil, and at worst, only let in the *poor* poacher with *small* means of destruction, against the *rich* one

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with *unlimited* ones, and might lead to the prevention of *both*, by the public enforcing the existing laws against all offenders, whether rich or poor.

The publication, therefore, appeared to me to be the lesser evil of the two; yet it must be admitted, both are evils, particularly as against the angler; and it is exceedingly probable, that from this "halting between two opinions," (that is to publish, or not to publish,) the following Observations would never have been intruded on the public attention, had not a recent circumstance occurred, in which a gentleman (who has held a high military command in a foreign service,) while *angling* from a boat in the Thames, was, upon two different occasions, disturbed in his amusement by a clergyman and his servant, in a manner the most offensive and insulting, and which was followed up by conduct replete with acrimony and hostility, very generally considered, not only impolitic but widely different from what

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is usually expected in the conduct and character of an ecclesiastic and a gentleman.*

On these two occasions, which of course soon became public, a strong sensation was naturally created in the minds of persons residing in the neighbourhood of the transaction, as their own rights and the enjoyment of a highly prized recreation were involved in the question; and it being known that I had devoted much time and attention to the subject, I was so strongly pressed to publish the Observations on the general right that I felt myself bound to attend to their wishes.

My object has been to bring into one point of view, both the history and the law of the subject; I have aimed at nothing more; whether I have succeeded or not, the public must determine. That the work may have errors is exceedingly probable, but of that also the public will judge; but I submit that the autho-

* Since writing the above I have been informed that *a lady*, the wife of an equally respectable gentleman, has been annoyed, while angling from a boat, in the same manner and by the same person.

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rities produced are conclusive in favour of the public right contended for, and till its opponents "can rail those authorities from off the public records, they 'll but offend their lungs."

But whatever may be the result of this publication, as to the increase or diminution of the recreation of fishing, it must be attributed (to say the least of it) to the intemperate zeal of those who have hitherto called themselves "Proprietors of private Fisheries in the River Thames." If an *increase* of amusement should take place, a good will arise out of an evil: if, on the contrary, a diminution of it, they must blame their own conduct in pushing matters to such an extremity as to compel individuals to ascertain their legal rights, and when ascertained, must not be surprised if they are determined to exercise them.

I flatter myself it will clearly appear, that the public at large are by law entitled to fish both

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with angle and lawful nets; and at the same time it will be equally clear, that the present system of destroying fish by cart and waggon loads, by means of drag and flew nets, is altogether unlawful, and ought for the future to be prevented.

For my own part, as an angler, I sincerely wish that a hint suggested to me a short time since by a worthy and enlightened friend, and a magistrate, (that of preventing fishing with nets, or indeed any other mode than that of rod and line) could be adopted: by which means the River Thames would be full of fish, and the inhabitants of the towns and villages on the banks be essentially benefited by an influx of company from different parts of the country, who would visit them purposely to enjoy the amusement on the first and most beautiful river in the kingdom.

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# OBSERVATIONS

ON THE

*Public Right of Fishing in Public Navigable Rivers in general, and the River Thames in particular.*

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SEVERAL Informations having within these few years past been laid against persons for Fishing in the River Thames, by others calling themselves Proprietors of fisheries in that river, have occasioned an enquiry into the rights or claims of each party: and the object of the following sheets, is to submit the different authorities extant on the subject to the judgment of the reader, previously premising, that those authorities are intended principally to apply to that part of the River Thames *not* within the jurisdiction of the City of London.

Before, however, we enter on these authorities, it may not be amiss to examine what each party claims as a right.

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1st.—The gentlemen, or proprietors, claim a *private* and *exclusive* right of fishery in certain parts of the river, as a free fishery, a several fishery, or a common of fishery,* acquired by them either by purchase or descent. Under one or the other of these titles, they say, they are entitled, not only to fish what they term their respective parts of the river, as they may think proper, but to exclude all other persons from a participation in the amusement of fishing, or at least an equal enjoyment of it.

2ndly.—The public on the other hand contend, that the gentlemen possess no such exclusive rights, that the fishing in the River Thames, as well as every other navigable river, is common to all the King's subjects; and that unless the party claiming such exclusive right, can *produce* a Grant from the Crown, or can *prove* a Prescription, and such grant is antecedent to the first year of the reign of Richard I., or such prescription be legally proved, the presumptive right is in favour of the public claim.

* For the distinction of these several sorts of fishery, vid. 2d. Black. Com. 39., and Schultes on Aquatic Rights, p. 62, et seq.

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Such I believe are the claims of each party, and we shall hereafter endeavour to show how each is supported.

It appears, that prior to the reign of King John, the appropriation of various parts, both of the Thames, and other navigable rivers in the kingdom, by the King and some of his subjects, (who at the time they wished to monopolize the game, coveted also the amusements and profits of fishing,) was one of the grievances at that time complained of, and that the fisheries, as well as the navigation of the rivers, was much injured and impeded by such appropriation: for we find, that in the 16th chapter of Magna Charta, it is provided, that "no owners on the banks of the rivers, shall so appropriate or keep the rivers several in him, to defend or bar others, either to have passage, or *fish* there, otherwise than they were used in the reign of Henry II."

And the Mirror on this chapter states, "that many rivers were so inclosed in which formerly was common of fishing." And by chapter 39 of the great Charter, it is directed that "All wears and kiddles shall be demolished on the Thames and Medway."

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Lord Coke, in his Institutes, observes, that "a kiddle is a proper word for open wears, whereby fish are caught: that the erecting such was a *pour presture,* or encroachment; making *that* several, or separate to *one,* which ought to be common to *many;* that this was forbidden by the common law on public rivers, for that every public river or stream is a King's highway."

Such then appears to have been the common law right of the subject, which seems to have been invaded by the King and others, but which was restored to the public by the Great Charter.

Like many other rights, however, of a similar description, which being beneficial to all, is by all neglected, and as is too frequently found by experience, no individual would defend his right, because he knew others would be benefited as well as himself; the owners of large estates on the banks of the rivers appear to have profited by this neglect, and have endeavoured to convert this public right into a private one,* and they apply the doctrine (which

* From very similar causes the common law right of the subject in game was invaded.

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is certainly correct as to rivers *not* navigable) to those which are, viz. that the waters and fishings are the property of those persons whose lands adjoin such rivers.

But before this exclusive claim can be allowed, we ought to be informed by what *legal* means the public have *lost* their right, thus shown to have been legally vested in them; and we shall presently see, that if those persons who call themselves proprietors, mean to claim such an exclusive right, it must be proved, and supported by the production of a Grant from the Crown, or by Prescription, which implies a grant.

We have already seen, that the chapter of Magna Charta, before referred to, establishes the public right of passage and fishing in all navigable rivers.

The next authority I shall refer to, is in the 2nd Blackstone's Commentaries, page 39, where it is stated, that "a free fishery, or exclusive right of fishing in a public river, is a royal franchise; though the making of such grants, and by that means appropriating what seems to be unnatural to restrain, (the use of

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running water,) was prohibited for the future by King John's Great Charter, and the rivers that were fenced in his time, were directed to be laid open, as the forests to be disafforested. This opening was extended by Henry III. to those also that were fenced under Richard I., so that a franchise of free fishing ought to be at least as old as Henry II."

The next authority is the case of Warren against Matthews, 6 Modern Reports 73, where it is decided "that *every subject* of common right, may fish with *lawful nets* in a navigable river, as well as in the sea, and the King's grant cannot bar them thereof, but the Crown only has a right to royal fish, and that, the King only may grant."*

In Lord Fitzwalter's case it is declared, that "in the Severn, the soil belongs to *the owners* of the land on each side. The soil of the River Thames is in the King, but the fishing is common to all." 1 Mod. Rep. 105.

"A person claiming a free fishery, or several fishery, or a common of fishery, must show

* Vide also Burrow's Reports 2164.

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the foundation of his claim, for the right is *prima facie* in all the King's subjects." *Id.*

"One claiming solam Piscariam in the River Ex by a grant from the Crown. Et per Holt C. J. The subject has a right to fish in all navigable rivers, as he has to fish in the sea, and a *quo warranto* ought to be brought to try the title of his grantee, and the validity of his grant." Salkeld Rep. 357.

In Carter against Murcot, which was an action for fishing in the River *Severn*,* the defendant pleaded that "it was a navigable river, and also that it is an arm of the sea wherein every subject has a right to fish." The plaintiff replied (without traversing these allegations) that "this was part of the Manor of Arlingham, and that Mrs. Yates was seized of that manor, and prescribes for a several fishery there; issue being joined, a verdict was found for the plaintiff.

It is observable in this case, that in the Severn the soil of the river is not in the King,

* In the Severn the soil of the river belongs to the lords, and a special sort of fishing belongs to them likewise; but the common sort of fishing is common to all. 1 Mod. Rep. 105.

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and that here a prescription was proved, and therefore a verdict very properly found for the plaintiff; which, on a subsequent application for a new trial, the court refused to disturb.

But Lord Mansfield in delivering his judgment in that case states,

"In rivers *not* navigable, the proprietors of land have the right of fishery on their respective sides, and it generally extends, "ad filum medium aquæ."

"But in navigable rivers, the proprietors of land on each side *have it not;* the fishery is common; it is *prima facie* in the King, and is public."

"If any one claim it *exclusively*, he must show a *right*. If he can show a right by prescription, he may then exercise an exclusive right, though the *presumption is against him*, unless he can prove such a prescriptive right."

"Here it is claimed, and found: it is therefore consistent with all the cases, that he may have an exclusive privilege of fishing, although

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it be an arm of the sea; such a right shall not be *presumed*, but the *contrary prima facie;* but it is capable of being proved, and must have been so, in the present case."

Mr. Justice Yates, in the same case, says "I was concerned in a case of this kind; such a claim was made, but the claim failed, because it there happened, that such a right could not be proved; therefore it was in that case determined, that the right of fishing was common." 4 Burrows Rep. 2162.

The next authority I shall offer, is an Act of Parliament, in which not only the Common Law right of the subject is recognized, but his interest in fee simple declared.

The statute I allude to, is that of the 2d Hen. 6. c. 15. Anno Dom. 1423, which is entitled "An Act to prevent persons fastening nets athwart the River Thames and other rivers." After reciting that "it had been the practice to fasten trinks or nets by day and night to large posts, boats and *ancres* across the River Thames and other Rivers of the Realm, which was the cause of great destruction of fish," it prohibits



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such practice in future, and has this important proviso :

" Provided always, that it shall be lawful for the possessors of such trinks or nets, if they be of assize, to fish with them at all seasonable times, drawing and pulling them by hand as other fishers do, with other nets, and not *fastening* or *tacking* the said nets to posts, boats, and ancres, continually to stand as aforesaid."

" *Saving always to every the King's Liege People, their Right, Title, and Inheritance in their fishings in the said Waters.*"

This is certainly a most important statute; for it not only confirms the Common Law right of the public, to fish in the River Thames (whatever may be the right as to other navigable rivers,) but it prohibits (if not in the strict letter, at all events in spirit) that disgraceful practice but too frequently resorted to, by those who call themselves proprietors of fisheries, in dragging the river with nets in the manner now pursued :—A practice at once disgraceful to gentlemen and sportsmen, and seldom or ever resorted to even by the profes-

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sed poacher; and there can be no doubt, that if it is not an offence under the strict letter of this statute, it would be so at Common Law.

Such are a few (among many other authorities) advanced in support of the *Public* claim; and they should be well considered by those persons who claim an exclusive, or peculiar right, before they attempt to enforce such right, as it is presumed they would find it difficult (if not impossible) to find authorities to contravene them.

From these authorities then we find, that there are two modes by which the person who claims such peculiar and exclusive proprietorship can support his claim.

The first is by Grant from the Crown.
The second by Prescription.

We will take each in their order:—
First then, he can claim by the production of a Grant from the Crown, and that grant will particularize the extent of the liberty or privilege granted.

But it must be remembered that such grant



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must not only be antecedent to the reign of Richard I., but it must be *produced* and *proved*, for it cannot (as in ordinary cases) be presumed, but the contrary, *prima facie*.

The evidence then, with respect to a grant, is extremely short, and if it possesses these requisites, as to dates, &c., it appears from the authorities I have before quoted, on its production and proof it may succeed.

His next claim is by Prescription, which implies a former grant.

Now, what is Prescription, and what are the requisites necessary to support it? and can it *in this* case be implied?

1st. What is Prescription? We are told that "Prescription or custom presupposes an original grant, which being lost by length of time, immemorial usage is admitted as evidence to show that it once did exist, and that from thence such usage was derived." 2 Black. Com. 30.

Such appears to be Prescription or custom.

2nd. What are its requisites?

We are told by another authority, that

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"every custom has two essential points, viz. time out of mind, and *continual* usage, without interruption." 1 Institutes, 110.

"Now time out of mind has been long ago ascertained by the law to commence from the beginning of the reign of Richard I., and any custom may be destroyed by evidence of its non-existence in any part of that long period from that time to the present." 2 Black. 30.

Again. "To make a particular custom good, the following are necessary requisites. First, that it has been used so long, that the memory of man runneth not to the contrary; so that if any one can show the beginning of it, it is no good custom. *For which reason no custom can prevail against an Act of Parliament since the statute itself is a proof of a time when such custom did not exist.*" 1 Black. Com. Introduction 76.

"If any one can show the beginning of a custom within legal memory, that is, within any time since the first year of Richard I., it is not a good custom." Christian's Notes on Blackstone.

"Prescription, or custom, must be *conti-*

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*nued*, it must be *peaceable* and *acquiesced* in, not subject to *contention* and *dispute*; for, as customs owe their original to common consent, their being immemorially disputed either at law or *otherwise*, is a proof that such consent was wanting. 1 Black. Com. 77.

Such appear to be the requisites necessary to support a Prescription or a custom.

Let us now see how far Prescription can in this case be implied, or ever proved.

We have before seen that the right of fishing in all navigable rivers is *prima facie* in the public; that the King's Grant cannot bar them thereof; that a person claiming an exclusive right must prove it, for it shall not be presumed, but the contrary *prima facie*; that no custom shall prevail against an Act of Parliament; and that there are several Acts of Parliament besides the great Charter in which the public right is acknowledged. Therefore no custom or prescription can be offered or given in evidence against these acts.*

* In the case of Carter and Mercot these Acts were not pleaded in bar, and therefore could not perhaps have been

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The gentlemen, therefore, claiming these exclusive privileges would do well to consider, whether their prescriptive rights possess all the qualities here required; for if they fail in *one* point, they fail in *all:* for the presumption is in favour of the public.

Have they from the 1st year of Richard I. exercised the right they claim *peaceably?* Has such claim been acquiesced in? Has it been without *contention* and *dispute?* Are the charters of King John and Henry III., or the statute of Henry VI. still in force? (nay, even were they repealed, I should contend, that, as they once had been in force, it would be sufficient to destroy such prescription.) Or is there a single Act of Parliament which recognizes or protects a private or exclusive right of fishery in the River Thames, or in any other public navigable river?

In the year 1787 this right was the subject of a law-suit, and perhaps it is to be regretted that the question had not been put at rest; but after incurring all the expenses of a

made available: *sed quere*, had they been pleaded, would the result have been the same?

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suit, an arrangement was made between the parties, that the public right of angling should be admitted, and the action dropped.

Having considered the subject as affected by Grant, Prescription, the Statutes, and decisions of the Courts,

We come now shortly to examine in what way it is affected by the Common Law of the land, and endeavour to prove that by that law the public have had, used, and exercised, time out of mind, to take fish, (or attempt to take fish,) in all public navigable rivers.

In doing this I shall avail myself of the assistance afforded me by a small pamphlet published in 1787, while the above suit was pending.

"The Common Law is the unwritten law of the land, and consists of *general* customs, and usage, declared and established by the judgments of Courts, and authentic records, or proved by other sufficient evidence to have been used, time out of mind, without legal impediment or obstruction."

Our great law writers say hereon :

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"The law of England is divided into three parts: the Common Law, Statute Law, and *particular* Customs; for if it be the *general* custom of the realm, it is part of the Common Law." Coke's 1. Institutes.

"The Common Law is the ancient usage and custom of the realm, before any statutes were made." Shepherd's Epitome of the Laws.

"The Common Law is grounded on the general customs of the realm." Terms de la Ley, 147.

"General customs, which are the universal rule of the whole kingdom, form the unwritten or Common Law." Black. Com. Introd. p. 67.

"The Common Law of England is a law used time out of mind by prescription. That custom which is common throughout the realm, is Common Law." Sir Henry Finch's Discourse on Law, p. 77.

If, therefore, it can be proved, that this public right hath been used and practised, time out of mind, continually, without legal interruption, it proves it to be the Common Law

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right, or privilege, and of course common to all. And, although these authorities have been applied on a former occasion to the right of *angling* only, yet their general application to all other fishings will hereafter appear.

I will not go into sacred history, either on the subject of fishing with nets or angling, which I might easily do, but I will presume my readers are fully as well, or perhaps better acquainted with these authorities than myself. I will only observe, that it was allowed to the clergy when the more sanguinary sports, and athletic exercises were forbidden; and most historians and travellers record it as the universal practice of all nations. But to come more near to the time it is intended to establish the usage and practice of it, viz. at and before the beginning of the reign of Queen Elizabeth, being the time the first statute now extant was made on the subject of fishing.

There is a book, (one of the most ancient printed in this kingdom)* called "The Boke of

* Printing was brought into England by William Caxton, a mercer, in 1471; who, it is said, had a press in Westminster Abbey till 1494.

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St. Albans, emprynted at Westmystre, by Wynkyn de Word," in small folio, and contains, among other curious matter, " A Treatyse of Fyshynge with an Angle."* It was written by Dame Juliana Barnes, Prioress of the Nunnery of Sopwell, near St. Alban's.

It clearly proves that the art of angling was then used, well known, and practised throughout the kingdom, without any legal impediment, in all public rivers; and particularly the reason she gives for publishing this book confirms the right of angling being then held and esteemed common to all; for she says, " And for by cause that this present treatyse sholde not come to the handys of eche ydle persone whych wolde desire it, yf it were emprynted alone by itself, and put in a lytyll plamflet," she has therefore compiled it together with divers books interesting to gentlemen and noblemen.

So that, though the good lady was desirous of keeping the exercise of this diversion to " gentlemen and noblemen," yet she fairly ac-

* Some account of this book may be seen in the Biographia Britannica. Article, Caxton. Note L.

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knowledges that the commonalty had a full right to the enjoyment of it; and her wish to prevent the common people from this diversion, by means of making the purchase of her book too high priced for them, plainly indicates there were no other, or other legal prohibitions or means to prevent them.*

Again, she says, "The reason of her so publishing the Treatise on Angling was, lest those common persons should, if they had the assistance of the book, utterly destroy 'this dysporte of fyshynge,'" by which we may fairly infer, that the custom of taking fish by angling was very frequent, and commonly used by such as she calls common persons.

Another book was printed on this subject in 1590, by Leonard Mascall, entitled "A Book of Fishing, with Hook and Line, and all other Instruments thereunto belonging."

* It is presumed the old lady conceived this "a pious fraud," a term very generally used, and a conduct as generally practised at that period; but like most other frauds, it was well calculated to defeat the end proposed, by affording evidence of the public right in the attempt to conceal it.

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Another book, by John Taverner, in 1600, entitled "Approved Experiments in Angling."

And another in 1613, entitled "The Secrets of Angling, by J. D. A Poem."

And in 1653, Walton's "Complete Angler" was also published, which has been called "a pleasing and instructive treatise on the subject."

Now by all these books it is proved indisputably, that the usage, custom, and practice of angling, was well known, commonly used and practised, and was a general custom throughout the realm.

Walton says, in an account he gives relative to the laws of angling, that "The statute of 1st. Eliz. c. 17. had so much respect to anglers, as to leave them to catch as big as they could, or as little as they would; and, that though this recreation be lawful, yet no man can go on another's private ground to angle without licence; but in case of a river, the taking fish with an angle is not trespass."*

* Nor poaching, *vide* next note.

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Should it be observed, that all this doctrine applies to *angling* only, and not to the use of nets or other accustomed modes of fishing; I answer, that when these observations were originally made, it was at a time when the general right was in dispute, and it was then thought, that if the action then pending was persevered in, that the establishment of such general right might be perverted to bad purposes, and productive of bad consequences, by encouraging what were termed poachers.* This was one of the reasons that induced the parties claiming the general right, to consent to the accommodation which then took place. But at that time it never could have been contemplated, that those persons who then claimed an exclusive proprietorship in the fisheries, would resort to a practice equally (if not more) destructive than the poachers, that of dragging the rivers with nets, and thus collecting waggon and cart loads,† which they frequently do,

* Query—If poachers can exist, where a general right to take fish exists? "Angling with a rod only could not be called poaching, nor was it ever so esteemed." By the Lord Chancellor, in Rex v. D. of Beaufort, 2nd Chitty, 1034.

† However improbable this circumstance may appear, it is nevertheless literally true, and has been practised to this extent.

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for no one good purpose, and with which they know not what to do after they are caught, and after such unfair and illegal practices endeavour to prevent in others the fair and legal use of the net.

If the public rivers are to have a poacher, it must be obvious they had much better have a poor than a rich one; as the poor poacher's means of destruction are much more limited than the rich one, and whatever the poor one obtains may be of some service to his family, and by sale is distributed amongst the public; while, on the contrary, what the rich one gets is neither necessary for himself, nor beneficial in the slightest degree to the public, but extremely detrimental to the fair sportsman.

But, now to apply these general observations on angling to the general right of taking fish by lawful nets, and other accustomed modes of fishing.

First, then, in all these observations there does not appear a single restriction or exception to the other general modes of taking fish; while the Statute of Hen. VI. recognizes the right of using nets, "as the right, title and

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inheritance of *all* his Majesty's liege people," but prohibits the system above noticed.

2ndly. All the cases determined by the Courts concur in acknowledging this right; particularly the case of Warren and Matthews before noticed, where it is expressly stated, that " every subject of common right may fish with lawful nets in a navigable river."

3rdly. That not a single Act of Parliament, either directly or indirectly, recognizes a private or exclusive right of fishing in a navigable river: but, on the contrary, acknowledges that right to be in the public, particularly the Statute of 1st Eliz. c. 17. entitled " An Act for the Preservation of the Spawn and Fry of Fish;" and the preamble states, " that for the preservation hereafter of spawn and young breed of eels, salmon, pikes, and of all other fish which heretofore have been much destroyed in rivers and streams, salt and fresh, within this realm, insomuch that in divers places, they feed swine and dogs with the fry and spawn of fish, and otherwise *(lamentable and horrible to be reported)* destroy the same to the great hinderance and *decay of the Commonwealth.*"

Here is no injury complained of, as violat-

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ing the right of an individual, but of the Commonwealth or the public. Besides, the Act applies, not only to *all persons*, but to *all rivers*, and only restrains the shameful destruction of fish in the manner described by the Act.*

4thly. There are other Acts of Parliament for punishing offenders who steal fish in *private* rivers, pools, ponds, or inclosed places, but not a word is said of using *nets* in public rivers, provided those nets be of proper assize, and used at proper times.

5thly. That at all events here is a *prima facie* case made out on the part of the public, which, till it is rebutted by stronger evidence by the opposite party, must stand ; as neither Grant nor Prescription shall be implied, but must be proved.

Thus I submit, that both by the Common Law, the two great Charters, the subsequent Statute Law, and the decision of the Courts,

* In some editions of the Statutes the penalty under this Act is 20*l.*, in others 20*s.*; in the record it is not distinguishable whether it be pounds or shillings. The latter seems more adequate to the offence.—Vid. 2 Burn, 369.



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the public right of fishing, both with nets and by angling, in navigable rivers in general, but in the River Thames in particular, is completely and indisputably established.

But it has been argued, that the River Thames is not, 1st, a public river; 2ndly, a navigable river; 3rdly, a river constantly navigable; or 4thly, a river naturally navigable; for all these grounds have been taken, and all these distinctions have been made, in consequence of an expression of Bracton's, "*fluminibus perennibus*;" which in fact means no other than constant rivers, or perpetual by running, as distinguishable from those, sometimes dry, and conveys no idea whatever of navigable.

These objections are evidently taken with a view to mislead, and are endeavours to prove that the River Thames is a private river, not naturally navigable; for even the persons who urge these objections are obliged to admit, and do admit, that the fishing is common, if the Thames be naturally navigable, or navigable time out of mind.

We will here again take each in their order,

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first observing upon the four preceding objections:—

1st. If the River Thames be not "a public river," a navigable river, a river constantly navigable, and a river naturally navigable, what other river in the kingdom is so?

2nd. With respect to "a navigable river," it is a vague term; it may mean for ships, for barges, or for small boats, and such is at places and times every river in the kingdom.

3rd. "Constantly navigable," is still more uncertain; no river is strictly speaking so; not even the sea.

4th. "Naturally navigable," is more loose and uncertain still, and if it has any legal meaning, it is the having *been navigable time out of mind.*

In these points of view I shall now proceed to consider the question; and if I establish the fact, that the River Thames now is, and time out of mind has been, a public navigable river, in such case I presume I give an indisputable answer to all these objections.

I would previously remark, that it appears the true ground of distinction of the fishing



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being public or private is, *whether the river be public or not*; for although Lord Mansfield, and several others, use the term *navigable*, it seems only to be applied as evidence of the river being public.

It is in effect said by Blackstone, vol. ii. p. 8. that originally, all land and water was public and common to all; and private property arose merely from inclosing, fencing, or separating a part from the general mass, and holding or occupying it separately by the public acquiescence.

All such rivers, brooks, or streams, as are *not* navigable, and run through private, separate, or inclosed grounds, and which the public cannot have free access to without trespassing, I apprehend to be private: and these I conceive are the only descriptions of property intended to be protected by the 5 Geo. III. c. 14. and the different other Acts of Parliament for the preservation of fish and fisheries, unless otherwise particularly mentioned.

But all such rivers and streams as have time out of mind been navigable, or which the public have a right to navigate, or have a free access

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to, cannot be said to have been inclosed, separated, or appropriated, to the use of any individual; but still are, and remain public, and common to all the King's subjects. This is confirmed by Sir M. Hale, Bracton, and by Magna Charta before noticed.

All such rivers as now are, and time out of mind have been navigable, as run by the King's highway, or by a common, and to which the subjects now have, and constantly have had, or might have had, free access, it is conceived are public rivers, and common to all.

With this doctrine agrees the observation of Walton, that "if the angler offends not with his feet, there is no great danger with his hands;" that is, the trespass must be committed by going on private property to make the party responsible.

This distinction is strong, and marked, and perhaps enough has been stated to prove, that the River Thames is, and for time out of mind has been, a public river, which would be sufficient to establish the public right of fishing in it.

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But I shall now proceed to prove it to have been time out of mind a *navigable*, as well as a *public* river.

The River Thames, properly speaking, extends from the junction of the river with the Isis at Dorchester bridge, in the county of Oxford, to the Sea, separating the counties of Oxford, Bucks, Middlesex, and Essex, on the north side, from those of Berks, Surrey, and Kent, on the south side of the said river.

There are many persons who apprehend, that the River Thames includes the river sometimes called the Thames, and sometimes the Isis, running from Leachlade, in Gloucestershire, to Dorchester; but as it is contended that the right of fishing is in all public rivers, it is of no great consequence on the present occasion, whether that part of the river be denominated Thames or Isis.*

* There are also many persons who claim as private property the Lock Pools, and certain waters partially separated from the main stream, by a Eyott, or island, but I apprehend no such claim can be supported; for if the River Thames is public, it must be so *e ripa ad ripam*, from bank to bank, its natural boundaries.

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To prove that the River Thames (at least from its junction at Dorchester with the river now known as the Isis) for several years past has been both public and navigable, I shall offer the following authorities.

To prove that it is so *now* would be to waste the time, and insult the understanding of the reader.

To do this, it will only be necessary to produce the Statute of the 11 Geo. III. (1771.) for improving the said navigation, by which it is acknowledged then to exist, and is directed to be improved and completed. And the books of the Navigation Company will be further evidence, that, for many years before the passing of that Act, and ever since, more than 100,000 tons of goods have been annually conveyed by barges on the said river, to and from London.

The above will, for the present, be sufficient to prove that the river has been *for several years past* navigable.

I shall now endeavour to prove, that the said River Thames hath been a public river

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*time out of mind*, which term hath been before explained; and if my observations and authorities may be a little tedious to some of my readers, yet to the antiquarian they may afford amusement; and although some of those authorities may not be considered as *legal* proofs, yet they may carry conviction to the mind of every one, except those who are predetermined not to be convinced.

Cæsar in his Commentaries (book v. cap. xi.) says "the territories of Cassibellanus, were divided from the maritime states by a river called the Thames," and tells us "that he forded it at the only place it was fordable in his (Cassibellanus's) kingdom;" (book v. c. xiv.) which the author of the pamphlet before alluded to, supposes to have been at Harleyford, because it is the *lowest* place on the Thames with the termination of "ford."*

The Thames is well known to have been the division in the Saxon heptarchy, between

* Did the author mean that in a geographical point of view it was the lowest on the river; or to allude to the small depth of water at Harleyford, and fordable on that account? If the latter, I should rather think he was mistaken; for whatever

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the kingdoms of Mercia and Wessex ; hence in those times, the river must have been public and common to the people of both nations. *Vide* History of England.

In an antient book called Dunthorne, it is said that "the River Thames was the cause of the first erecting and building the city of London."

Heylin in his Geography says, "in England there are 325 rivers, though some say 450, of which the chief is the Thames."

In Doctor Campbell's history, the Thames is mentioned as the first, and principal of the three public navigable rivers in the kingdom.

"The Thames is the most famous river of England." Sir Henry Chauncey's History of Hertfordshire.

In Seymour's history of London, it is said

it might have been in Cassibellanus's time, it is now as deep as most places on the river, and appears to have been always naturally so. It was, however, a little excusable in him, in wishing to fix "the point of honour" near his own residence, and create an additional interest in a spot perhaps the most beautiful on the whole line of navigation.

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" the Thames is the longest of the three famous rivers of this isle, and no way inferior in abundance of fish."

There are numberless other authors on the same subject, such as Camden, Drayton, Sir John Denham, &c, all proving it to be the first public river in point of consequence in the kingdom.

But to proceed to *more particular* and *legal* proofs of it.

Richard I. by his Charter to the citizens of London in 1197 " grants and commands that all wears that are on the Thames, be removed, wheresoever they shall be within the Thames, and that no wears be put up any where within the Thames."

It has already been shown, that King John by his Charter, as well as Henry IIId by his confirmation of it, directs, " that all wears and kiddles shall be utterly put down by Thames and Medway."*

By the statute of Westminster 2d the 13

* And that the *passage* and fishery should be open and free.

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Edward. I c. 47. it is provided " that the Rivers Humber, Ouse, Trent, (and several others there named) and all other waters in which salmon are taken, shall be put in defence, from the Nativity of St. Mary to the day of St Martin."

Upon this statute Sir Edward Coke remarks, " that the noble River Thames is not named, and it was held, that the general words extended to *inferior* rivers only," and therefore the River Thames is added in another place, viz.

In the 25th Edward III. it was prayed by the Commons, and in the same year it was enacted that " the statute of Westminster made against *the destruction of salmon* may be kept, and that all mills set on the aforesaid rivers be thrown down, and shall take effect as well on the River Thames as elsewhere." See the Statutes, and Cotton's Abridgement of the Records in the Tower of London, by Prynne, 1657. pp. 75-80.

In the 50th of Edward III. it was petitioned by the Commons " that no *salmons* be taken between Gravesend and Henely-upon-Thames in kipper time."

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Answered, "that the Statutes shall be kept." Vid. id. 124.

In the 8th Richard II. it was petitioned by the Commons "that no man *take any fry or fish in the River Thames* unless the mesh *of the net be according to the statute.*" Vid. id. 305.

*Here is a recognition of the public right of taking fish with nets, provided they be of proper assize.*

In the 14th of Richard II. by petition from the Commons, it was prayed "that a remedy may be had against mills, stanks, kiddles, and such like engines and devices on the *Thames.*" Answered, that the statutes shall be observed. Id. 339.

By Statutes of Richard II. c. 19. and 17 Richard II. c. 9, reciting the statute of Westminster 2d. it is directed that "young *salmons* shall not be taken from the midst of April, 'till the Nativity of Saint John Baptist, in the waters of the *Thames,* Humber, Ouse, Trent, or any other waters."

In the 2d Henry V. the Mayor and Com-

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monalty prayed "that all kiddles, wears, and other engines, on the Thames, Medway, and Ley, should be laid down." Id. 539.

And it must be remembered that it has been before shown, that it has been said by Hale, that "the soil of the Thames is in the King, and the fishing is common to all."

By this it must plainly and evidently appear, that the River Thames has always been considered as a *public* river; the charters, which are confirmations of the public rights, confirm it. Sir Edward Coke instances it as public, and the King's highway.—Hale says, the soil is the King's; and the Commons of England taking the cognizance to remove encroachments and obstructions, and to prevent the illegal destruction of fish, is proof of its being public; for if the river had been a private one, neither the legislature, the charters, nor the Commons, could have interfered; for instead of a confirmation of liberty, it would have been an infringement of private property. If the encroachments had been made on *private* property, the remedy would have been private; but that being public, proves the river and grievance thereon to have been public.

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I shall now endeavour to prove, that this river is not only a public river, but has, time out of mind, been a *navigable* one. And here I shall adopt the plan of the author of the Pamphlet before noticed, beginning with the most modern authorities, and proceed up to Magna Charta, observing that these proofs are not only legal ones (being taken from Acts of Parliament), but it is submitted are ample, strong, and unanswerable.

By the Statute of 24th Geo. II. c. 8, for the better carrying on the navigation of the Thames and Isis, it is recited "that the Rivers Thames and Isis have *time out of mind* been navigable from the City of London, to the village of Bercott, in the county of Oxford, and from the City of Oxford, westward, beyond Letchlade."

By the Statute of 6 and 7th of William and Mary, c. 16, to prevent exactions of occupiers of locks and wears on the Thames, it recites "that the Rivers Thames and Isis have *time out of mind* been *navigable* from the *City of London to Bercott*, in the County of Oxon, and *for divers years last past* from thence to somewhat farther than Letchlade."

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By the Statute of 21st Jac. I. c. 32. s. 3. for making the Thames navigable from Bercott to Oxford, it is said, "the River Thames for many miles beyond the City of Oxford, westward, is already navigable, and from London to the village of Bercott."

The Statute of 1st Jac. I. c. 16. entitled "an Act concerning wherrymen and watermen," recites that "persons passing by water between Windsor and Gravesend, had been put to hazard and danger;" and declares "that no watermen shall take apprentices, but he that hath served a time to it, (except western barges, mill-boats, and other vessels, serving for other uses than carrying passengers."

M. was fined 200l. for diverting part of the River Thames, by which means he weakened the current to carry barges towards London. *That river is a highway.* Noy's Reports, 103.

In 1579, John Bishop complained to the Lord Treasurer (Burleigh) of the locks, weirs, and flood-gates, on the Thames between Maidenhead and Oxford, and showed that by these stoppages several persons have been drowned, who all belonged to barges that used the river.

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And in 1585 said Bishop petitioned the Queen (Elizabeth) against the same locks, weirs, &c.

The persons complained of showed cause for maintaining them, that they were as of great antiquity as the towns and villages whereto they joined; that they were of necessity for the passage of barges.

That the mills, locks, and weirs, were for the most part the Queen's inheritance. (Records of Star Chamber Proceedings.)

By Statute of 23d Eliz. c. 5. touching iron mills near London and the River Thames, "no person shall convert to coal for making iron, any wood growing within 22 miles of the River Thames from Dorchester downwards."

See also the Statute of 1st Eliz. c. 15. to nearly the same effect, only extending its provisions to timber growing within 14 miles of the sea, or any part of the *Rivers Thames*, Severn, Wye, Humber, &c. &c. or *any other river by which carriage is commonly used by boat*, or other vessel, to any part of the sea.

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The Statute of 27th. Henry VIII. c. 18. recites, that "Whereas before this time, the River *Thames* among all other rivers within this realm hath been accepted and taken, and is indeed the most commodious and profitable to all the King's liege people, *and chiefly of all others frequented and used*, as well by the King's Highness, his estates, and nobles, merchants, and others, repairing to the city of London and other places, shires, and counties adjoining the same, which River of Thames is, and hath been, most meet and convenient of all others, for the safeguard and ordering of the King's navy, *conveyance of merchandises* and other necessaries, to and for the King's household, *and otherwise*, to the great relief and comfort *of all persons within the realm*, 'till now of late years divers evil minded persons create *obstructions*." The above statute directs that no such obstructions shall be made in future.

The Statute of 1st. Hen. IV. The Commons prayed "that no barge on the River Thames should be forfeited as a deodand;" and it was answered "to be as heretofore." Records in the Tower. Cotton's Abridg. 398.



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In the 50th. Edward III, the Commons represented that "the watermen of London complained of leaving locks, stanks, and wears, upon the River Thames; and namely a lock called Hambledon lock, and for that, there is a custom demanded of them passing the bridges of Staines, Windsor, and Maidenhead, and other locks, against their custom." To which it was answered, "that for the locks and kiddles the statute made in the 37th. Edward III. shall be executed, and for exacting money of them for the bridges, they shall make suit in Chancery." Id. 132.

In the 37th. Edward III, it was petitioned "that a remedy might be found against wears, and such other engines, on the River Thames, to the annoyance of boats. Id. 97.*

Here then it is submitted are abundant proofs that the River Thames has been a navigable river time out of mind; and it is

* In the 21st Ed. III., it is recorded that the four great rivers of England, viz. the Thames, Tese, Ouse, and Trent, *were wont from antiquity to be open and free for every ship to pass.* Id. 57.

The Queen of King Hen. III. 1263, was insulted, as she was going by water from the Tower of London to Windsor. Rap. vol I. p. 336.

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to be remarked, *that in not one of these statutes is there the slightest recognition of a private right* of any sort; and, surely had any such existed in law, some notice of it (either as a reservation of such right, or in some other manner) would have been taken, particularly in some of the late Navigation Acts relative to the River Thames; *in which many of those who now claim such exclusive rights are named as commissioners for carrying those Acts into execution, yet have never ventured to obtain a legislative sanction for them.* And it is again asked, if the River Thames is not naturally navigable, what river in the kingdom is?

It is true, that that part of the river extending from Bercott to Oxford appears to have been made navigable by the Statute of Jac. I., but that statute, as well as those of William and Mary, and Geo. II, expressly state, that the *other* part of the river has "time out of mind been navigable from Bercott to London." We are also warranted in concluding from these authorities, that it has not been made navigable by art, but that it was naturally so.

In contradiction, however, to this, it has



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been asserted, and endeavoured to be proved, "that the River Thames is not, nor ever was, *naturally* navigable, but has been made so by the *locks and wears* upon it."

To this it is answered, that all the authorities already produced, prove the direct contrary of this; for, from Magna Charta, to Edward IV, it is declared, that those locks and wears *impeded and hindered* the navigation. The fact seems to be, that these locks and wears appear to have been built for the purpose of penning a head of water to the mill contiguous, there being a mill to every one of them; and it has been justly observed, that admitting the fact, that they were erected for the navigation, the argument is in favour of the public right, and will lead to, and indeed affords, a more *ancient* proof of navigation on the River Thames; for some of them are mentioned in Doomsday-book, and are said to be as old as the adjacent villages, and of course the River Thames was then navigable.

But in order still more satisfactorily to prove this fact, we will notice the different statutes on the subject from Magna Charta downwards.

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It has already been shown, that the wears and kiddles on the Thames and Medway were directed by the charters of King John and Hen. III., to be removed and demolished.

By the 25th of Edward III. st. 4. c. 6, it is said, that "the common passage of boats and ships in the great rivers of England, is *annoyed* by wears, &c.," and directs that they shall be pulled down.

The Statute of 45th Edward III., c. 2, recites the last statute, and that "such wears, &c. were to the *great damage of the people*," and directs them to be pulled down.

The Statutes of Richard II., c. 19, and 1st Henry IV. c. 12, recite and confirm the said statutes of the 25th and 45th Edward III, for pulling down wears, &c. on the petition and request of the Commons, "that the common passage of ships and boats in the great rivers of England be thereby greatly *disturbed*, so that they *cannot pass* as they were wont."

The Statute of 4th Henry IV., c. 11, recites that "wears, stanks, and kiddles, being in the water of Thames, and of other great rivers

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through the realm, the common passage of ships and boats is *disturbed,* and much people perished, and the young fry of fish destroyed and given to swine to eat,* contrary to the pleasure of God, and to the great damage of the King *and his people;*" and enacts that the statutes be kept, and commissions awarded to certain justices in every county of the realm, where need be, to enquire and punish offenders.†

This statute is of great importance to the general question. Here is no private right protected or even recognized, which no doubt would have been the case had any such right existed. On the contrary, the injury is said to be to the King *and his people;* viz. to the King, as owner of the *soil,* and to the people, in the destruction or injury in their right of fishing. Here is also prohibited a practice, too often indulged in, even now, by those who claim an exclusive right of fishing; viz. that of destroying and wasting fish in the manner I have before alluded to,‡ and which this Act evidently

* Vid. statute of Elizabeth.

† Who were allowed 4*s.* a-day for every day they travelled.

‡ As proofs of this destructive practice, it is a fact well

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designed to prevent and punish; and although those proprietors may not give them to swine, yet that they thus illegally take and waste them cannot be denied, and the injury is the same to the public after they are once taken, whether they are applied to swine, or wasted in any other way. Coupling this statute with that of the 2nd of Henry VI., and 1st of Elizabeth, before noticed, it is difficult to comprehend how an exclusive right in any one can be pretended, or how a doubt of the public right can be for a moment entertained.

The next statute in point of time is that of the 2nd Henry VI., but as I have before noticed it rather at large, I must beg leave to refer the reader to its provisions, which appear to me most important, as recognizing the public right by a legislative enactment.

known, that in one instance, between thirty and forty bushels of roach, a jack of 35lbs., besides other fish, have been taken at a draught. Another instance has occurred equally notorious, of between forty and fifty bushels being in like manner taken; and I have lately been informed by a person who was present at the time, that between sixty and seventy bushels were taken at another time; and that a less quantity than this is not thought a good draught. Yet the persons who practice this destructive and illegal system, are those who complain of the poacher and angler.

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The next statute, in point of importance as well as time, is that of the 12th Edward IV. c. 7, which is entitled "The penalty of them that do not perform the award and order of the commissioners authorized to pull down wears." After reciting "that by the laudable statute of Magna Charta, among other things it is contained, that all kiddles by Thames and Medway, and throughout the realm, should be taken away, (saving by the sea banks,) which statute was made for the great wealth of this land, in avoiding the straightness of all rivers, so that ships and boats might have in them their free passage, and also in safeguard of all the fry of fish spawned within the same; upon which Magna Charta, the great sentence and apostolic curse by a great number of bishops was denounced against the breakers of the same;" and reciting the statutes of Edward and Henry before mentioned, it expressly declares, "that all wears, &c. were to be pulled down, that boats might have free passage," and particularly mentions the Thames.

These several statutes then must evidently and indisputably rebut the assertion, that the River Thames was made navigable by means of these wears, &c.; but they prove the direct

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reverse, and that it was navigable prior to their erection, which obstructed and hindered the free navigation of it; as well as that the river must have been naturally so, as no other means of art appears at any time to have been made use of to render it so. They prove also, that not only the *navigation* belonged to the public, but that the *fishing* also was preserved for their use; as the injury is said to be done, not to a private individual, not even to the King himself, but to the injury of the King *and his people*, and not in *one* of them is there a saving clause of any private right of fishing or otherwise.

But we come now to consider the Act relied upon by those persons who claim the exclusive right of fishing in the Thames, which, I believe, is the statute of 4 and 5 William and Mary, c. 23,* and is the one upon which every attempt has yet been made to found a conviction for fishing in the River Thames;† for there is no other statute upon which they have ventured to proceed to defeat the public right, or that a private right can be pretended to be supported by.

* Or the 22nd and 23rd of Car. II. c. 25.

† It is difficult to know which, for both are equally irrelevant to the present question.

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I would first observe, that this statute has been stigmatized, and its provisions condemned by more legal authorities than one. Amongst other provisions, it authorizes a gamekeeper to *kill his fellow-creature* if found *trespassing* in the night: it creates pigeons and fowl game. In an act professedly made for the preservation of *game* is introduced clauses for the preservation of *fish;* and thus insidiously holding forth one matter, viz. *game,* and relating to another, *fish,* which are not game; for the latter of which no one would ever suspect from the title of the Act any provisions would be included or penalties created.

Mr. Christian with great reason asks, "could any one have supposed these enactments possible in a land of learning and liberty?" and adds, "that no magistrate ought to enforce an Act so pregnant with *ignorance* and *absurdity*." And with respect to the Clauses relating to fishing, he stigmatizes them as being "miserably composed."

This Act however is evidently intended to apply to all disorderly and mean persons, taking fish out of *ponds, waters, rivers, and other fisheries,* to the damage of the *owners* thereof, and is confined to several or private ponds,

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waters, rivers, and fisheries, in inclosed grounds. In an Act of Parliament penned "in so loose, uncertain, and ungrammatical a manner," little is to be relied on, and less understood. But should it be argued that by the word "river" being used in it, a private fishery in the River Thames, or any other navigable river, is thereby included, I must deny the position, or the inference.

It has been already shown, and it is admitted, that persons may have a right to a fishery *in a river not navigable*, (such as the Ock, the Lambourn, and the Lodden,) and it is to fisheries in such *rivers* that the Act applies, as well as to fish in ponds, &c. *in inclosed grounds.*

Besides, this Act is designed for the protection of *the owners*, of such rivers, ponds, &c. Now it has already been clearly shown that the soil of the River Thames is in the King, but the fishing is common to all his subjects, and that it is an *alta regia via.* Who then has ever heard of the owner of the River Thames otherwise than as an *alta regia via?* We may as well talk of the owner of a turnpike road.

In the construction of Acts of Parliament we are told, that "a statute which treats of things

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or persons of an *inferior* rank, cannot by any general words be extended to a *superior*. So a statute treating of deans, prebendaries, parsons, vicars, and *others, having spiritual promotions,* is held not to extend to *bishops,* though they have spiritual promotion. Deans being the highest persons named, and bishops being of a still higher order." 1 Black. 87.

And we have before seen that Sir Edward Coke in his remarks on the Stat. of Westminster 2., 13 Edward I. c. 47, distinctly states "that this statute, providing for the protection of the Rivers Humber, Ouse, &c. did not include the River Thames, *that not being named in it,* and that the general words extending only to *inferior* rivers, it did not include a *superior* one." And as ponds, waters, rivers (without name) are here only mentioned, by the same mode of reasoning as well as by the general construction of the statutes, no waters of a superior nature than those described in this Act would be included in its operations.

In addition to these observations it must also be remembered, that there is not a single conviction for fishing *in the Thames* to be found in any of our law books. Where the offence

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(if it be such) is so common; it is a little singular that such should be the fact.

The only ground then on which it is conceived the parties who call themselves proprietors can possibly pretend to or claim an exclusive right to fisheries in a public navigable river, such as the Thames, must be by Grant from the Crown, or by Prescription; and it has been before shown that such grant must be *produced*, for it shall not be presumed, and even if produced it may be necessary for the grantee, or those claiming under him, to consider how far such grant may be affected by the many statutes of resumption made from before Magna Charta down to the time of Charles II., by which Grants from the Crown of lands, *fishings*, &c. are declared to be null and void, unless the full annual value be reserved and paid by way of annual rent,* or the matter excepted by those statutes. Also, if the grant shall appear to have been made since the 1st year of the reign of Richard I., if so, the charters before-mentioned render it entirely void.

If they claim by Prescription, which is usage

* Vide Case of Duke of Portland and Lord Lowther.

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time out of mind, on a presumed grant, it has already been shown, that independent of numberless other requisites, almost impossible in this case to be produced, that prescription or custom cannot be pleaded against an Act of Parliament; and the statute of Henry VI. as well as several other statutes, recognise the public right of fishing, both by *nets* and angling. And, although it is said such prescription may by possibility be proved,* the probability is much doubted, should these statutes be pleaded in bar.

It, however, may be urged in this case, (as under the Game Laws) that many persons have *purchased* their fisheries at large sums of money, and for valuable considerations; but that does not mend their claim, any more than it would do had they purchased any other property under a bad or defective title. If such title be bad or defective in one case, it must be so in the other; or if there was any difference, it ought to operate with more force where the *public at large* would be prejudiced, than where an individual would.

* It must be remembered this was said of a river where the soil of it was in the subject, and not in the King.

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I have thus endeavoured to prove that by the Common Law, the public have had, used, and exercised, time out of mind, a right to take fish, or attempt to take fish, either by angling, or nets, of a legal description, in all public navigable rivers, but particularly in the River Thames. That such right is proved by ancient books on the subject, confirmed by the opinions of our most learned judges, and the determination of the courts of law.

That the River Thames now is, and time out of mind has been, a public navigable river.

That the several statutes made, instead of restraining such fishing, acknowledge and allow the Common Law right, nor do they directly, or indirectly, recognize in the slightest manner the private right claimed by many, which, if such right had ever existed, would in the course of so many years have appeared.

The conclusion I infer from all these authorities is, that the public have legally the right or privilege of taking fish, or attempting to take fish, by angling, or legal nets, (except in the fence months) in the River Thames, and in all other navigable rivers, where the soil is in the King.

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Supposing then the public right to be, such as I conceive it to be, and that the gentlemen who claim to be proprietors, should persist in prosecuting their present claims, it may naturally be asked, in what manner has the public a power of establishing their claims to the right in question?

The usual mode has been, that when a supposed offence has been committed, for the magistrates to issue a summons for the appearance of the party offending.

The defence in such case should be, a *justification*, and *a right* so to fish: if this defence is properly made, a much more than a *colourable* right would appear, and hence arises a question of *title*, and from that moment the jurisdiction of the magistrate ceases.

For in the case of Ashbrittle and Wyley, it is distinctly laid down, (and I have frequently known it acted upon at the Quarter Sessions,) that in cases of title, the magistrates at those Sessions have no jurisdiction. *Vide* 4 Burn. 428.

"Persons aggrieved may appeal to the next

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Sessions, whose determination therein shall be final, *if no title to any land, royalty, or fishery, be therein concerned.*" 2 Burn 259. 22 & 23 Charles II. c. 25. s. q.

Again, " If the defendant, when put on his defence, set up a *claim* to the thing he is accused of taking, or destroying, and there is any *pretence* or *colour* for such right, the justices ought to acquit. 1 Burn 572. Rex. *v.* Speed. Lord Raymond's Reports, Vol. i. 583.

The justices, therefore, even at their Quarter Sessions cannot *try* a Prescription, or any other case where a question of title arises. Nay, even if a *grant* was produced, it would be equally incompetent for them to decide the question, as the validity, or resumption of that grant may be disputed, and be the issue between the parties. If, therefore, they cannot *try* such a right at their *Quarter Sessions*, it is absurd to suppose they could legally *decide* it, in a summary manner, at their *Petty Sessions.*

It has lately been the practice of *some* of the country magistrates, (for in London and Middlesex, no such practice prevails) of excluding professional gentlemen from attending on any



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occasion, on behalf of the accused, particularly on questions relating to these, and the Game Laws.

This practice certainly exposes them to the accusation of wishing to decide on cases, in which they are more particularly and personally interested than any other, with an arbitrary and tyrannical hand. In cases of *felony*, and where the parties are only to be committed for *trial*, there may be some reason for this arrangement; yet even in this case, the magistrates of London and Middlesex, not only allow the attendance of a professional adviser, but will even adjourn the examination if the accused wishes for such assistance; but where a *summary* conviction is to follow the magistrates' decision, both as to the law, and facts—where the question is, guilty or not guilty, and where the punishment immediately follows the conviction, both reason and justice must condemn such a rule. But it is now decided in the case of Cox and Coleridge, that in cases of *summary* conviction, the defendant is *entitled* to such assistance; and should this be refused in any case arising under these laws, the best and safest way for the party accused would be, to set up his *legal claim*, and offer to pro-

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duce his attorney, or legal adviser, to urge the point of law, (which few defendants can be supposed capable of doing, and ought not to be expected to do, and to refuse which, would perhaps be dangerous to a magistrate;) and if this is refused, leave it to the magistrates' discretion to act as they may think proper and most prudent. And if a conviction ensues, remove it into the Court of King's Bench, and try the right.

But a much better (because it would not only be a more liberal and gentlemanly, but a more effective) mode of trying this right would be, either on a private understanding between the parties, or by some individual giving notice to any gentleman who imagines himself entitled to a fishery of this description, of his intention to fish, at a time and place specified, merely with the intention of trying the right. Sufficient should be done for that purpose, *and no more*, and thus the matter would come fairly and properly before a tribunal competent to decide this important question.*

* From the facts stated in the preface, it is more than probable the question will shortly come before a legal tribunal.

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The author will here take the liberty of introducing a curious circumstance falling within his own knowledge, a few years ago, at a petty sessions of some neighbouring magistrates.

An information * had been laid by a person in the neighbourhood of the Thames, against some respectable tradesmen for fishing with nets, "in the water of the *private fishery* † the property of A. B.—*in the River Thames*, for the purpose of stealing, taking, and killing fish out of the said *private* fishery, without the consent of the said A. B. the *Lord* or owner thereof."

The defendants on being summoned attended, and by their solicitor urged many of the arguments here enumerated. After hearing which, the defendants and their solicitor were

* This information is a curious document and a unique of its kind. It purports to be the information of A. B. and states that "he has been *informed*, and believes, and doubts not but that he shall be able to prove" the parties guilty of the offence. Thus it is an information on an information.

† There is no such thing as a *private* fishery in a river, recognized by the law: there are only a *several* fishery, a *free* fishery, and a *common* of fishery.

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directed to withdraw, while the magistrates considered their judgment, the gentleman, however, claiming this private fishery, remaining in the room the whole of the time.

At length the parties were recalled, and informed that the magistrates admitted that the authorities offered by their solicitor had considerable weight in their opinion, but that they felt it their duty to convict them in the penalty, *on the ground that the defendants had not proved the* locus in quo *was in the River Thames!!*

It was in vain for the solicitor to urge that such proof was unnecessary, as the *information stated the offence to have been committed in the private fishery of A. B. in the River Thames.* Or that if such evidence was necessary, and did not appear, the defendants were entitled to an acquittal, as the information was not supported by any evidence of that fact, which was on the part of the informer indispensably necessary. That every magistrate there was a commissioner of that river, and knew the *locus in quo* as well as his own fish-pond, and that many of them claimed a similar right with the said A. B. The conviction was persisted in, and the defendants were told, they might ap-

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peal, if they were dissatisfied with it. This, however, as tradesmen, they thought it not prudent to do, and therefore paid the penalty. But had the conviction been removed into the King's Bench, there cannot, I think, be the slightest doubt of its being quashed.*

It is, however, much to be regretted that this question (like the Game Laws) has been pushed so far as it has lately been done, by some persons claiming this exclusive right, as it must necessarily tend to an examination of the law on the subject. It must also be obvious, that much injury might be done to

* A paragraph in Sir John Hawkins' edition of Walton's Complete Angler deserves notice. "But there are (says he) some covetous rigid persons whose souls hold no sympathy with those of the innocent angler, having neither got to be lords of royalties or owners of land adjoining to rivers, and these do by some apted clownish nature and education, for the purpose, insult and domineer over the innocent angler, beating him, breaking his rod, or at least taking it from him, and sometimes imprisoning his person, as if he were a felon. Whereas a true-bred gentleman scorns those spider-like attempts, and will rather refresh a civil stranger at his table than warn him from coming on his ground upon so innocent an occasion. It should therefore be considered how far such furious drivers are warranted by the law, and what the angler may (in case of such violence) do in defence of himself;" which he proceeds to state.

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the fair sportsmen (particularly to the angler), should the public right be carried to its utmost extent, or rather should that right be abused. An equal injury may be sustained by the parties now calling themselves proprietors of these private fisheries, but for which they will only have to blame themselves, by their endeavours to monopolize a privilege they appear to me not entitled to, and beyond what the public may feel inclined to allow, but which by a little prudence and less arbitrary measures they might have retained.

The writer has here to acknowledge the assistance he has received from the author of the Pamphlet so frequently alluded to. He has not only adopted nearly the course he has so judiciously pursued in the arrangement of his work, but has been greatly assisted by it, and by the reference to the authorities he has quoted. Whenever he has had occasion to refer to other authorities, and to quote from them, to use the words of the author of the Pamphlet, he trusts, "those quotations are so plain, that every man may apply them, and on this state of facts it is now left to the consideration and determination of every impartial person, whether he has succeeded in

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proving the public right of fishing in the Thames to be just and legal; and that, if the authorities quoted shall be found to be faithful and authentic, the inferences to be fairly drawn and the conclusion just and convincing: it is the *Duty* and *Interest* of every independent *individual* to lend his assistance in *support of this last best right and privilege of the public* in its amusements, *and to transmit it as pure and as inviolate to his posterity,* as he received it from his ancestors," whether he be an inhabitant of the banks of the Thames, the Isis, the Ouse, the Trent, or any other navigable river, where such privilege may appear to exist; for to all of these is the question equally important, and to all of them ought it to be equally interesting.

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*In the Press, and shortly will be published,*

BY THE SAME AUTHOR,

**OBSERVATIONS**

ON THE

**AME LAWS;**

WITH NOTES HISTORICAL, CRITICAL, AND EXPLANATORY.

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PRINTED BY G. CANNON, MARLOW.

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# The Anglers Guide.

## 1827

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The Barbel, so called from its four barbs, two of which are at the corners of its mouth, and two others at the end of its Snout, is a heavy, dull fish, and gives very inferior sport to the Angler, in proportion to its size and strength. The Barbel begin to shed their Spawn about the Middle of April, and come in Season about a Month or 6 weeks after. In their usual haunts, among weeds &c they are fond of rooting with their nose like the Pig. In summer they frequent the most powerful & rapid streams, and settle among logs of wood, piles, & weeds, where they remain for a long time apparently immovable; during the Winter Time, they retire

to deep bottoms - The most killing baits for the Barbel, are the spawn of Trout, Salmon, indeed of any other fish, especially if it be fresh, respecting which, the Barbel is very cunning; the Pastes that imitate it, must, therefore be well made, & of fresh flavour. It is also an advisable plan to bait the water over night, by spawn or a quantity of Gut Worms - The Barbel will also bite well at the Cob Worm, gentles & cheese soaked in Honey - The rod & line with which you fish for Barbel, must both be extremely long, with a running Plummet attached to the latter, as they swim very close to the bottom. By a gentle inclination of the rod, you may easily ascertain when there is a bite - immediately upon which the fish should be struck

Where generally found
Rapid & shallow streams, gravelly banks, under Bridges, in Currents -

Season & proper times
April to August - from sun rise till 10 A.M. Morning & 4 P.M. to Sunset -

Depth from Ground
Touch Ground -

Pastes &c
Old grated cheese, worked up with new cheese, or butter, coloured with saffron or steeped in Honey

Gentles from putrid Flesh, Lobworms from Gardens - Brandlings from Dung Hills } All Flies or Fish Insects

Bream shed their Spawn abt Midsummer, and although, they are occasionally met with in slow running rivers, are reckoned a Pond fish, where they will thrive in the greatest perfection; In fishing for them the Angler should be very silent, and take all possible care to keep concealed from the fish, which are angled for near the bottom. His Tackle must also be strong

Where generally found

Slow rivers, or Mill ponds, near Weirs, and in clay or muddy bottoms - & - rough streams - - -

Season & proper times

April to December & Sunrise to 9 & 3 to Sunset

Depth from Ground

Touch Ground

Pastes

Red Paste colored with - Vermillion or Saffron, or new Brown Bread mix'd with Honey, or worked in the Hands to a consistence like the red - some add a drop Blood - - -

Gentles

Gentles, Flag worms, Sow worms - [in flannel bags] Dock Worms

Grass Hoppers in June or July

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Carp, is a fish that by its frequency of spawn
and quickness of Growth, is greatly used to stock p
They spawn 3 or 4 times a year, but the earlies
time is about the commencement of May - In
angling for Carp, it is necessary to make use
of a strong Tackle, with a fine Gut next the
Hook, and a float formed of the quill of a
Goose - They bite almost close to the bottom
- The river Carp is accustomed to haunt in
the Winter, the most quiet & broad parts of
the stream - In summer they live in deep
holes, reaches & nooks, under the roots of tree
&c

Where generally found
Still, deep pools or rivers
muddy bottoms - -

Season & proper times
April to August - very
early & very late

Depth from ground
3 Inches from bottom
at weather in Mid-
Water - - - - - -

Pastes
Blood of sheep's heart, mixed
with Honey & flour, worked up
chewed bread worked stiff,
with Honey or Sugar & Gum Tra

Worms
Dark bobs found in sandy ground, kept in Mould,
Gentles, flag worms, wasp-grubs found in the Nest
hardened over the fire, marsh worms found in Marshes

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The Chub is like the perch, a very bold biter, and will rise eagerly at a natural or artificial fly, They Spawn in June or about the latter end of May at which time they are easily taken by a beetle with his legs & wings cut off, or with a fly, or still more successfully by a large Snail - When fishing at Mid Water, or at bottom a float ought to be made use of, Strong Tackle is also requisite as they are a heavy fish & usually require a landing Net to pull them out

When generally found } Season & proper times to take
Still deep waters, under } May to December - Bites
boughs, gravelly bottoms } early & very late -

Depth from ground
3 Inches from Bottom hot weather.
in mid-water ~~3 to 9 Inches~~
~~from bottom or near the top~~ -

Pastes
Red & brown pastes made
from white & brown Bread
as for Bream ~~Steamed bread~~
~~pulled in the hands till~~
~~stiff, then crumbled more~~
~~with flour & sugar & form~~
~~with gum Arabic Water~~

Worms
Earth Cobs - gentles, flag-worms
wasp-grubs - cow-dung Cobs,
cadis, worms - ~~Grasshoppers~~.

Flies
~~Stone~~ fly - green drake, oak fly - ant-fly
~~Stone~~ ~~Palmer fly~~ ~~Summer Chafer~~ ~~May fly~~
~~Black fly~~ -

Insects
Snail slit-gra
hopper - beetle.

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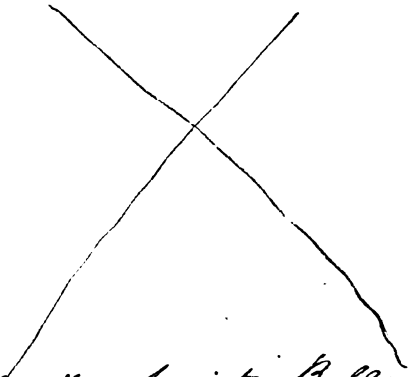
Dace are a very active & cautious fish, and
rise to a fly, either real or artificial — they spawn
February & March — they frequent gravelly, clayey
and sandy bottoms, leaves of the water-lily & deep
holes if well shaded. In sultry weather they are
frequently caught in the shallows, & during the
period are best taken with grasshoppers or —
gentles — In fishing at bottom for Roach or
Dace which are similar in their haunts and
disposition, bread* soaked in Water, and kneeded
to a good consistency, & then made up together
with bran into round Balls, and thrown into
the place where it is proposed to angle, will
be found very serviceable but must always
be thrown up the Stream



* or loam made up into Balls with Bran &
Barley Meal —

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Where generally found
Sandy bottoms - deep rivers eddies & ships Stems —

Season & proper time to Angle
May to October - all day particularly cloudy weather —

Depth from ground
3 to 9 Inches from bottom or near the top. ——

Pastes
Chewed bread worked in the hands till stiff. bread crumb worked with Honey & sugar - moistened with gum Ivy Water

Worms
Earth-bobs - Gentles - flag Worms & brandlings — — ——

Flies
Stone fly - green - drake. oak fly - palmer fly / Round or plaid ant-fly - May fly - black-fly

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The Gudgeon is a fish in some request, both for the flavour and the sport it affords to the inexperienced Angler. It is very simple, and is allured with almost any kind of bait — It spawns 2 or 3 times during the year; is generally from 5 to 6 Inches long & found in gentle streams with a gravelly bottom. In angling for Gudgeons, the bottom should be previously stirred up. as this rouses them from a state of inactivity, & collects them in shoals together — Some anglers use two or 3 Hooks in gudgeon fishing, but a float should is always used, but the fish should not be struck on the

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first Nibble motion of it, as they are accus-
-tomed to nibble the bait before they swallow it
It frequently happens, that in angling for Judges
Perch are caught

Where generally found — Season & Proper time to angle —
Gentle streams with a gravelly bottom — May to Octr. all Day

Depth from Ground — Paste —
Close to the ground — Red & brown Pastes made from white & brown bread as for Bream

Worms
Gentles - Brandling

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The Minnow serve as excellent baits for Pike, Trout, Chub, Perch, & many other fish which prey upon them & devour them greedily

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The Perch is a very bold biting fish, and affords excellent amusement to the angler. They spawn abt the beginning of March - In fishing

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for Perch with a Minnow, or branding the hook should be run thro' the back fin of the Bait, which must hang abt 6 Inches from the ground - A large Cork float shd be attach to the Line, which should be loaded about 9 Inches from the Hook - It must be observe that they invariably refuse a fly -

Where generally found
Deep rivers & ponds, holes & gravelly bottoms - - -

Season & proper times
August to May - Mid-da cloudy weather light south Wind - - - - - - -

Depth from ground
Six Inches from bottom or mid Water -

Pastes -
Red & brown as for Bream

Worms
Red Worms & branding Flag & cadis Worms

Fish Insects
Minnow & Yellow Tro

---

Roach are frequently taken with flies more ea - They will bite at all the baits which are prepared for Chub or Dace - They spawn in May - the roach haunts shallow & gentle

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streams – In angling for Roach the Tackle
must be strong, & the float large & well leade

Where generally found
Sandy bottom shady holes
under deep Streams –

Depth from ground
Below Mid – Water

Seasons & proper time
All parts of the year –
Midday in mild & cloudy
weather – Hot days Morn
& Evening – – – – –

Pastes
Same as for Dace

Worms
Earth bobs gentles – flay worm
wasp grubs – cow-dung bobs –

Fish Insects
Grass Hopper –

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The Pike or Jack, is a fish of enormous size
and the greatest voracity, their usual time of
spawning is about March, in extremely shallow
waters. The finest Pike are those which feed
in clear rivers; those of fens or meres, being
of very inferior quality. A high wind, or a
dark cloudy day, promises the best sport in

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Angling for this fish; as their appetite is keen at those periods —

There are 3 Modes of catching Pike, by the leger, the trolling or walking bait, & the Trimmer. The leger is a bait fixed by a stick driven into the ground, in one particular spot, a live bait is attached to the Hook, such as Dace, Gudgeon, or Roach; and, if a frog is made use of, the largest & yellowest will be found the most tempting. Sufficient line must be left free to allow the pike to carry the bait to its haunts. when fish are used as baits, the hook must be securely struck through the upper lip; & the line should be between 12 or 14 yds in length — If a frog should be made use of for a Bait, the armed wire of the hook should be put in at the mouth, & out at the side, and the hinder leg of one side should be fastened to it with

strong silk. The second mode, or trolling for Pike, is the most general, there are several small rings, which are fixed to each joint of the Trolling rod; & on the bottom joint a reel is placed. To this reel (which) 20 or 30 Yards of line, are not uncommonly attached; the line passes thro' each ring & is then joined to the gymp or wire, to which the hook or hooks are suspended. Two large hooks are used, about the size adapted to Perch fishing, which are placed back to back. There is also a little chain which hangs between the two hooks, and at the end of this Chain is a leaden plummet fastened in some secure way, into the mouth of a dead fish, & the hooks are left exposed on the outside. The bait, when it is thus fastened, is constantly moved about in the

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Water; that by the continuance & variety of its movements (being sometimes raised, & sometimes kept sinking) now goes with the stream, the resemblance to life (may appear more stretching & probable — The Pike if he be near, no sooner perceives this bait, than he immediately darts at it with velocity, supposing it to be a living fish, & drags it within him to his hole, where in about 10 or 12 Minutes he voraciously devours it, & implants the two hooks in his body. When he is thus secured, you must allow him ample time to fatigue & weary himself, then drag him slowly & carefully to shore, & land him with your Net, being cautious of his Bite —

The 3 Mode by which the Pike are occasionally caught, is by the Trimmer, or small wooden cylinder, round which, about

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the middle, in a small Diameter, 20
or 30 Yards of strong platted silk, or
Packthread, are wound, A yard or perhaps
more, is suffered to hang down in the
water, tied to the armed wire of a hook,
constructed for the purpose, & baited with
a living fish, commonly a roach. The
Trimmer is now permitted to go wherever
the current drives it, & the angler silently
follows, until a fish has poached the bait,
when he comes up & secures his prey, &
retires with it to the reeds near the shore
Whatever fish are made use of in catching
Pike, should be fresh, & preserved in a kettle,
the water of which, if changed frequently
will considerably improve them — There
usual haunts are shady, still, unfrequented
waters, near which are dark overhanging

boughes, and abundance of weeds; they are also to be met with in standing waters or ditches, which are partly overspread with that green slimy substance, which is better known by the name of Duck Weed — In such places he is sometimes discovered at the top, & occasionally in the middle of the water but in cold weather he is almost always at the bottom

Where generally found: clay banks, slow streams gravelly or weedy bottoms } Season & proper times to fish: All Day — Midwater

Depth from Ground: Midwater — Fish Insects

Flies: the largest & most gaudy flies, tempt pike in spring } Minnow, Yellow Frog, Roach, Dace

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The Sticklebach spawns in May — Trout & Pike will rise eagerly at them when the Prickles are cut off

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Tench like the Carp are generally con-
-sidered Pond fish - they shed their Spawn ab
July & are in season from Sept. to the latter
end of May - they will bite very freely durin
the sultry Months their haunts are similar
to the Carp, except that they frequent the foules
& muddiest bottoms where they may shelter
themselves among an infinite number of
weeds & reeds - hence you must angle for them
very near the bottom & allow them sufficient
time to gorge the ~~Hook~~ Bait. Use strong
Tackle & a goose quill float without a
Cork the general length of the Tench is from
12 to 14 Inches -

Where generally found
Ponds, rivers: weedy &
muddy bottoms -

Season & proper Times
All the year - Early &
late as possible -

Depth from ground
6 Inches from bottom -
mid water in Hot weather

Worms
Eard bobs gentles, wasp
grubs - brandlings &c -

Bastes
the same as Dace

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Trout are extremely voracious, & by their activity & eagerness, affora famous diversion to the Angler, their general time of Spawning is about October or November, they are frequent caught in a Mill Tail sometimes under the hollow of a bank or the roots of trees

In angling for Trout, there are many things worthy of particular Attention

1st That on the day on which the sport is undertaken be a little windy, or particular overcast, & the south wind is superior to all others if it do not disturb your Tackle

2nd The sportsman should remain as far as possible from the Stream, fish it downwards the line never touching the water

3rd. Clear streams are famous for Sport, & in fishing for them a small fly with slender wings must be used —

4th The lines should upon an average be

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about twice as long as the Rod

5th Let the fly be made to suit the sea
After a shower, when the water becomes of a
brown appearance the bait should be the "Cow
fly" the angler cannot be too quick (par
- ticularly in Fly fishing) in perception, or
too active in striking on the first rise of the
fish

The Trout may be caught at the top
the middle or the bottom of the water. Search
for him at the top with a natural fly, such
the green drake & the stone fly. but these two
only in the months of May & June — You have
no length of line with which to weary him
the capture must be effected by Main force
& if the Tackle be sufficiently strong to
resist the struggle of the fish, the angler
after a short contest may insure him a
triumph — Trout Angling at Mid Water
is effected by means of a small Minnow

or with a caddis grub, or any other species of worm — In angling with a Minnow, the most esteemed & the whitest ones, will be found to be the most killing bait — the Hook should be inserted in the Mouth & drawn out of the Eye 3 or 4 Inches or beyond — it should again be drawn thro' the mouth with the point of the Tail of the Minnow — In angling with a worm or caddis a Cork float & the finest Tackle must be used in muddy waters the Lob Worm is best, in clear streams the Brandling — The 1st is generally used for large Trout, the 2nd when small ones are expected —

The best mode of angling at bottom, with a Float is with a Caddis, which may be put upon the Hook 2 or 3 at the same time which should be merely to cover the point of the Hook — Trout never rises at a Caddis when the stream is impregnated with clay

When generally found — Season & proper times

Rapid cool streams — March to Michaelmas

clear and pebbly — All Days

Worms

Catch from Ground — Earth bobs - gentles, mag

Cold weather 6 Inches — gents - brandlings &c &c

from bottom - hot weather

cold fly at top water —

Flies all sorts — Fish, Insects

Minnow Grasshopper &

beetle —

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Baits &c generally used for fish, angled for in the Waters of Great Britain

Barbel — The spawn of Trout, Salmon &c bait the water over night with Spawn or cut worms — they will bite at a Lob Worm (from gardens) garlic and cheese soaked in Honey

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